

*A Manual of American*  
COPYRIGHT PRACTICE

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CHECKED-75



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## To the Reader

THIS IS A BOOK for the author, editor, agent, permissions department, publisher and his secretary—for anyone in the literary world who wants to know what to do in a specific situation involving copyright. It is not for copyright lawyers or even for law students who plan to specialize in copyright law. As one editor lamented, there are scores of books on the market to save you thousands of dollars and many lawyers to get you out of copyright difficulties and to redress your wrongs. The real difficulty is to find out what to do in day-to-day routine.

This *Manual of Copyright Practice* leans on the Copyright Act, the Copyright Office, decisions of the court in cases involving authors and publishers, and ordinary publishing practice. Perhaps in an effort to avoid legalistic complexities I have erred in using too great a simplicity of expression. Perhaps in attempting to resolve small difficulties I have included what to many not in the publishing field will seem to be obvious. Certainly the book is repetitious—deliberately so. Any person who read this book from cover to cover in one sitting would find many passages to use in what one contemporary magazine calls the 'infatuation with sound of own words department.' But this is not a book to be read from cover to cover at one sitting. It is a book for reference, for quick reference, and although the 'q.v.'s' are interspersed generously, there are many cases in which it seemed that a line of repetition would save minutes that would otherwise be wasted in page turning. For the same reason, bibliographical and legal citations have been omitted. If the novice in copyright will read Part I (the background of copyright; its subject matter and procedure; and the outline of the law) and follow this with perhaps the articles in Part II on Assignment, on Books, on Classification, on Application, on the Affidavits and the Manufacturing Clause, he may put the book on his desk and pick it up next only for a specific answer—unless he wishes to get an over-all view of the practical problems of authors and publishers by browsing in the section of Questions (Part III). For a general survey of my

topic, the reader is urged to refer to the Index. Although not given in the text, the cases cited for illustration are listed alphabetically in the Appendix. The articles on copyrighting works not directly related to the literary world—music, motion pictures, radio, prints and labels, art, and architecture—are ‘for the record,’ and considered only in their possible connection with book publishing. The whole question of legal procedure and penalties for infringement is completely omitted; these are matters not of copyright practice, but of copyright law, and require the service of a copyright lawyer. One bit of advice that cannot be repeated too often: in case of infringement, in case of any copyright trouble, consult a lawyer—and the best copyright lawyer available.

But if the minutia of copyright routine, which is the subject matter of this book, has been observed, there is little cause for worry. Anyone who scans the record of copyright cases from 1909 to the present will be convinced of the court’s sympathy for the author, the true copyright proprietor; invariably the literary pirate and the opportunist seem to come to grief. Another point brought home by the record is the fact that many of ‘the best people’ of the publishing world are involved at one time or another: Henry Holt, *The New York Times*, Theodore Dreiser, Charles Scribner, Eugene O’Neill, the Macmillan Company, Harper & Brothers, Arthur Kreyborg, the Oxford University Press, Frank Merriwell, the *Atlantic Monthly*, Yale University Press—the list is endless; not to mention the moving picture, music, and radio companies. Furthermore, a distressing conclusion is the fact that many of the litigations could have been avoided by attention to some minor routine detail.

The Copyright Office is more than generous in answering questions and guiding the copyright claimant towards adequate protection, as anyone who has appealed to it knows. But the Copyright Office is bound by the Copyright Act. Compared to the latitudes within which it may move, the sonnet’s scanty plot seems spacious. It would like to give advice about alternatives outside the Act, but it cannot commit itself. Interpretation of the Act is a matter for the courts. It cannot correct your application for you. So do not be annoyed when an application comes back because the author’s name is given Allen on the face of it and Allan in the affidavit. Spelling the author’s name correctly is your responsibility, and yours only—how should the Copyright Office know? Other slips, seemingly as innocuous, have prevented authors and publishers from defeating the machinations of infringers.

## ACKNOWLEDGMENTS

MY INDEBTEDNESS to books and people is comprehensive. Amdur's *Copyright Law and Practice*, Bowker's *Copyright, Its History and Its Law*, DeWolf's *An Outline of Copyright Law*, Howell's *The Copyright Law*, Ladas' *The International Protection of Literary and Artistic Property*, and Weil's *The American Copyright Law* have been my chief sources of consultation, and I cannot recommend any of them too highly for the person who wants an authoritative discussion of copyright law. They do not always agree, but in each you will find abundant citation of law and precedent for the point of view expressed. The material in the present volume on the European background of the copyright law owes much to the Howell and Ladas books, as well as to the *Encyclopaedia Britannica*. The *Copyright Decisions* from 1909-1942 (Copyright Office Bulletins 17-24) have been the greatest help, for here are the records of court decisions on the actual problems that face us. The changing philosophy of the courts with regard to many questions, for example, the moral right of an author to protect his work from mutilation even after sale, is fascinating to trace. Some of the decisions, especially those by Judge Learned Hand, are masterpieces of clarity and style.

My indebtedness to people is equally great. The staff of the Copyright Office has been extraordinarily co-operative and encouraging, and I want to express my gratitude especially to Mr. DeWolf and Mr. Howell and to Mrs. Iradell Rafter. Mr. Howell's article on The Copyright Office (page 9) is a welcome contribution to the text. The advice of Mr. Frederick Melcher and Mr. Benjamin Stern in regard to some of the more controversial questions has been of great value. Mr. Stern's and Mr. DeWolf's further kindness in looking over the galley proofs is one that only those who have performed a similar labor can fully appreciate. Miss Caroline Sauer has also been most generous in giving her time and many helpful suggestions. In view of the professional status of these people, let me hasten to add that any oversights, omissions, misinterpretations, or errors in the text are my own.

Then there are the many publishers, agents, and staff members of publishing houses whose letters and personal consultations have created what I believe will be one of the most helpful parts of the book—the section of questions. Since some have requested anonymity, I shall thank the houses they represent, and hope they will understand

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A very special debt of gratitude is due Mrs. Stephen Holutiak and Mr. Laurence Smith.

M. N.

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# PART I



# Background of Copyright Law

*'The Congress shall have Power . . .*

*To promote the Progress of Science and the useful  
Arts, by securing for limited*

*Times to Authors and Inventors the exclusive Right  
to their respective Writings and Discoveries . . .*

*To make all Laws which shall be necessary and  
proper for carrying into Execution the Foregoing  
Powers . . .'*

THE CONSTITUTION OF THE UNITED STATES

IN THESE WORDS the framers of the Constitution laid the foundation for the protection of literary property in the United States. Not that the idea of copyright was new in 1789. Even when the only books available were laboriously hand-copied manuscripts, it was generally acknowledged that ownership was vested in the creator of a work, though glory might be his sole reward. However, when books began to bring material profit, after the invention of the printing press, the problems of proprietorship became more complex, more realistic; for with the mechanical means of multiple reproduction came literary piracy. Once a book was placed in circulation, publishers the world over felt free to print it in quantity 'for the good of the people'—and of their own pocketbooks.

The first statute concerning modern copyright was the English 'Act of 8 Anne.' From 1476, when William Caxton began to print books in England, until the Statute of Anne in 1709-10, authors, or more often their 'publishers,' who were then really booksellers, were considered to have a perpetual common-law right in their works. The actual licensing of printers and publishers was controlled by the Crown, and was a matter of special privilege. In the Act of Queen Anne, the author for the first time in history had legal protection of his rights. The necessity for such an act was made clear in its opening words:

'Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing books without the consent of the authors or proprietors . . . to their very great detriment, and too often to the ruin of them and their families: for preventing there-

fore such practices for the future, and for the encouragement of learned men to compose and write useful books, be it enacted . . .

To protect the author from this abuse, the law conferred upon him the sole right to print his book for a period of fourteen years, with a second fourteen-year renewal period, provided he register the title at Stationers' Hall and furnish nine copies for deposit at various university and official libraries. Furthermore, the law had 'teeth':

And that if any bookseller, printer, or other person whatsoever, shall print, reprint, or import any such book or books, without the consent of the proprietor . . . then such offender shall forfeit such book or books to the proprietor of the copy thereof, who shall forthwith damask and make waste-paper of them; and farther, that every such offender shall forfeit one penny for every sheet which shall be found in his custody.

Other European countries were slow to follow England's example. Denmark's first copyright law was enacted in 1741. It declared that books could be reprinted only with the consent of the author or the first publisher, with several notable exceptions: hymnals, Luther's catechism, and 'abc books.'

It was not until 1793 that France enacted her copyright law, which was passed on to Italy, Belgium, Switzerland, and Holland as they came under the influence of Napoleon. The law assured to all authors, artists, and composers, regardless of citizenship, the exclusive right during their lifetime to sell, distribute, or assign their works throughout the Republic. Spain's copyright law was passed in 1847. One of the few progressive steps in the turbulent reign of Isabella II, it protected the works of Spanish authors, whether they were published in Spain or in any of the many Hispanic colonies; but if the works of colonial writers were in the Spanish language, they could be imported into Spain only with the consent of the Government.

In Germany, any federal law was much more difficult to enact because of the absence of a strong central government. From the time of Napoleon's defeat until after the Franco-Prussian War, Germany was comprised of many autonomous States, loosely bound in a Confederation. The primary purposes of the German Diet, especially during its earlier years, were the maintenance of peace between the States and self-defense if German territory was attacked by a foreign power. However, the Diet did pass a copyright law in 1838 (seven years after Heine had departed for France) to protect the subjects of the confederated kingdoms. The protection, unfortunately, proved to be only

theoretical. The States failed to enforce the law, and pirating continued to flourish. Germany's first national copyright law was enacted in 1870, when she at last attained the unity that resulted the following year in the establishment of the Empire.

The most important step forward in international copyright was taken in 1887 by the Berne Convention, resulting in the International Copyright Union. Although all the important European countries except Russia signed the treaty then or later, the United States has never done so. The Union abolished all formalities in securing copyright, and each member State granted to foreign authors whose works are first published in any unionist country the same rights that it grants to its own nationals.

The American colonists' ideas of copyright were naturally based on the practices prevailing in England. In the first few months of 1783, Connecticut, Massachusetts, and Maryland adopted copyright laws; in May of that year Congress recommended to the states that they establish copyright protection for 'United States citizens.' New Jersey, New Hampshire, and Rhode Island immediately did so, and by 1786 all of the states except Delaware had some sort of copyright provisions. But individual state legislation was unsatisfactory, as was inevitable. Happily, the Constitutional Convention perceived this, and Section 8 of Article 1 of the Constitution, quoted above, gave Congress the authority to enact a national copyright law.

In 1790 the first federal Copyright Act was passed. It applied to 'books, maps, and charts,' but although it protected the rights of United States citizens and residents (for fourteen years with a fourteen-year renewal period, as in the Act of Anne), it virtually gave its blessing to what would now be considered the pirating of foreign books; without bothering about authorization, printers and publishers imported any foreign books they thought would be popular here and reprinted them to their hearts' content. This actually was a service to the book-hungry Americans, as the cost of importing enough copies to supply the demand would have been prohibitive. At the time this practice was not confined to the United States. It prevailed even in England, whose copyright laws were then the most advanced in the world. Although the English still remind us of our early piratical sins, we may in self-justification point out that as soon as there was an American literature worth stealing, piratical editions of American works were numerous in England.

Other provisions of the Statute of 1790 stipulated that a copy of the

title page of a forthcoming copyright book should be deposited before publication, and that during the first two months after publication the copyright owner should run a newspaper advertisement of the facts of publication for four weeks. Within six months of publication a copy of the book itself had to be deposited with the United States Secretary of State. Should a printer deliberately infringe any work, the copyright of which had been so established, by issuing a piratical edition, not only would he have to forfeit all the copies he had on hand, but in addition he became liable to a fine of fifty cents for every sheet found. Half of this went to the author, the other half to the United States Government.

Amendments to this act followed at fairly regular intervals during the next century. In 1802 it was required that the book should carry a notice of copyright, and the law was extended to include designs, engravings, and etchings. In 1819 United States circuit courts were declared to be the courts of original jurisdiction in all copyright cases. A statute in 1831 consolidated the earlier acts and provided for the protection of music. It also extended the first term of protection to twenty-eight years, though the renewal term remained fourteen. Public advertisement, except in the case of renewals, was declared no longer necessary, but, probably because the postal system was improving, the six months' grace before deposit was cut to three months. Except for an amendment providing for the recording of assignments (1834), this act remained unchanged for the next fifteen years.

As early as 1837, American authors and publishers, inspired by Henry Clay and George Putnam, began to agitate against the unrestricted pirating of foreign books. It was not only English authors who were suffering from our indifference to piracy, but also those of other foreign countries whose nationals were immigrating to the United States in large numbers. A piratical American edition sometimes followed foreign publication within two weeks—which is a matter of amazement and wonder, considering the time necessary to publish a book today.

In 1846 the Copyright Act was again amended. It was now necessary to send one deposit copy to the Library of Congress, instead of to the Secretary of State, and a second to the newly founded Smithsonian Institution. The importance of this amendment is considerable, because by using the Library of Congress as a depository, a permanent index of United States copyright material was initiated. Since

then anyone wanting to determine the copyright status of a book has been able to have a search made for a nominal fee.

Another series of amendments began in 1855. In that year, deposit copies were granted free postage. Performance rights were granted to dramatists in 1856. In 1859, copyright matters were transferred from the State Department to the Department of the Interior. In 1861 it was provided that all copyright cases could be appealed to the Supreme Court, regardless of the amount involved. (Other cases were barred from appeal unless \$5000 or more was at stake.) In 1865 protection was extended to photographs, the period for post-publication deposit was cut to one month, and two years later a \$25 fine was set for failure to deposit.

In 1870 again a general act was passed, this time permanently placing the Copyright Office under the Librarian of Congress. The act included in its scope paintings, drawings, statues, chromos, models, and designs. It was still necessary to register the title of the book before publication and to deposit in the mail two copies of the book itself within ten days after publication. A fine of \$100 was fixed for the fraudulent use of a copyright notice. Four years later the form of official copyright notice was determined: the word Copyright, the year of publication, and the name of the copyright owner. Engravings, cuts, and prints were then defined as applying only to pictorial illustrations or works connected with the fine arts; 'prints and labels' for articles of manufacture were transferred to the Patent Office.

In 1891, the Chace Act was passed. By it we at last extended copyright protection to foreigners, but only if their books were manufactured in this country and bore a notice of United States copyright. The foreign author was required to register his book in the Copyright Office and deposit two copies there. All deposit copies had to be placed in the mails on the day of publication. The manufacturing clause and the requirement of the formalities of notice, registration, and deposit remain the chief obstacles to our joining the International Copyright Union even now.

In 1897, provision was made for a Register of Copyrights and his staff.

In 1905, in a further attempt to protect the rights of foreigners, an ad interim copyright clause was introduced, allowing foreign copyright proprietors of foreign-language books one year to decide whether it was worth while to reprint in the United States. This clause

was modified in the later law, but our present provision for foreign publications in the English language is far less generous.

The Copyright Act of 1909, our present law, has several notable improvements over the earlier provisions. Books of foreign origin in a foreign language need not be reprinted here to secure copyright; the copyright term now starts from the date of publication instead of the date of registration and deposit; our renewal term is extended to twenty-eight years.

# The Copyright Office \*

THE COPYRIGHT OFFICE is a quasi-autonomous bureau in the Library of Congress. Its offices and catalogue rooms occupy nearly one entire floor of the Library Annex, a new white Georgia marble building completed in 1939 directly behind the old Library. The most important function of the Copyright Office is the administration of the provisions of the Copyright Act relating to (a) the registration and certification of all original and renewal claims to copyright; (b) the recordation and certification of assignments of copyright; (c) the preparation of catalogues for each class of copyright entries; and (d) the preservation of all copyright records and other things required by law to be preserved—certain types of deposits not turned over to the library proper, correspondence, et cetera. The Copyright Office also acts in an advisory capacity in interpreting the Copyright Act in so far as it is necessary to do so for administrative purposes, and maintains a Public Information Office to assist the public in filing applications and to answer inquiries in regard to copyright procedure. The final decisions in disputed matters of law are made by the federal courts in copyright cases brought before them for settlement.

Before 1870 there was no central clearing house for copyrights. Every entry of title for the purpose of securing copyright had to be made in the clerk's office of the United States District Court in the district in which the author or proprietor resided. Hence there were as many title catalogue systems as there were District Courts throughout the country. This situation was remedied by the Consolidated Act of 1870, by which the whole copyright business, including the custodianship of previous record books and copies, was centralized in the office of the Librarian of Congress, who was required to 'perform all acts and duties prescribed by the law touching copyrights.'

During the next quarter of a century the growth of the copyright business was so great that Congress deemed it advisable to provide for a special department of the Library to deal exclusively with it, including the handling of copyright fees and the reception and

\* Material furnished through the courtesy of Herbert A. Howell, Assistant Register of Copyrights.

examination of deposit copies. In making appropriations for the ensuing fiscal year, an Act of 1897 provided for a new officer, the Register of Copyrights, who as head of the Copyright Department was charged with the performance of all duties relating to copyrights, under the direction and supervision of the Librarian of Congress. In 1900 the official designation was definitively changed to 'Copyright Office,' and in the general revision of the copyright law that took place in 1909, the Office acquired an even more distinct individuality, and the duties and powers of the Register were more specifically defined and considerably increased.

The Register of Copyrights serves as the legal, technical, and administrative head of the Copyright Office, which consists of 9 sections and a normal personnel of 155. He is responsible for the development of rules and regulations for the registration of copyrights and the interpretation and application of the provisions of the Copyright Act. He confers with authors, publishers, and attorneys on questions of foreign and domestic copyright. He is assisted in the administrative direction and supervision of the Office by the Assistant Register, who is responsible also for compiling and editing the series of bulletins entitled *Decisions of the United States Courts Involving Copyrights*. Dissenting opinions of the Revisory Board are referred to him for final decision.

In the absence of the Register and Assistant Register, the Executive Assistant acts as administrative head of the Office in all matters except those involving technical questions. He supervises the flow of copyright business through the Office and is liaison officer between the Copyright Office and other departments of the Government.

Every piece of incoming mail to the Copyright Office is counted, stamped, and checked for enclosures. If it is accompanied by a fee, the check or money order is carefully examined and assigned a receipt number. Except in a few cases, an index card is made for every piece of mail received. This preliminary work on incoming mail is done by the Mails, Files, and Search Section, which is made up of a Chief, an Assistant Chief, and five units with a total personnel of 37 employees. From here the mail is allocated to its proper department for further handling.

Correspondence relating to renewal copyright and applications for renewal are segregated, indexed, and sent immediately to the Renewal Examiner, who works under the supervision of the Senior Attorney,

and who determines whether the requirements of the copyright law have been met. The application is then passed to the Record Section (a Chief, Assistant Chief, and 25 recorders and reviewers) for registration of the claim and the issuance of the certificate. Applications for registration of Commercial Prints and Labels are likewise segregated, and sent to the Prints and Labels Section for examination. This department is comprised of a Chief and two clerks.

All other claims of copyright are sent to the Examining Section, one of the most interesting divisions in the Office. A Chief Examiner and Assistant Chief, with a staff of 9 clerks, scrutinize every application for copyright that is received. They determine whether the material is copyrightable and whether the requirements of the law in regard to deposit, notice, et cetera, have been met. If the application is found in order, the material is passed to the Index Section, comprised of a Chief and a staff of 19 indexers and cataloguers. However, when there is an error or inconsistency in the application, the case is sent to the Correspondence Section, with a recommendation suggesting the proper action to take. The 10 correspondence clerks and stenographers, under the direction of a Chief and Assistant Chief, then write the necessary letters, enclosing relevant forms, circulars, et cetera.

The Deposit and Periodical Section is responsible for the receipt and final disposition of all deposit copies and material received for registration. The staff is made up of the Chief, Assistant Chief, and 12 subordinates. Here the copyright number is assigned to each work to be registered. In addition, all periodicals and motion pictures presented for registration are examined in this section. After the proper records are made, the material is sent to the Index Section.

Copyright material passed for registration is carefully indexed there and again checked to see that the copies and applications are in proper order. Cards are made under the name of the copyright claimant, the name of the author, and the title, so that any registration may be readily found by the searchers. In addition, these entries are made on separate cards, which are passed on to the Catalogue Section for inclusion in the Catalogue of Copyright Entries. After the material has been indexed, it is sent to the Record Section, where the claim of copyright is recorded and the certificate of registration prepared. The record and certificate are then carefully checked, and the seal of the Copyright Office is affixed. In the Record Section are also recorded assignments and notices of use of musical works. A photostat of the

original document is made and inserted in a large volume. Until it is needed for photostating, the original is kept in a fire-proof safe.

The editing and compilation of the Catalogue of Copyright Entries is the function of the Catalogue Section: a Chief and 13 cataloguers and typists. Its editorial unit edits and alphabetizes the catalogue cards that it receives from the Index Section, and from these the composing unit prepares the proof, on electric typewriters, for the printer. The proof, after revision, is sent to the Government Printing Office to be reproduced by photo-offset. Books are catalogued under the name of the author; dramas, motion pictures, periodicals, and music under the title; works of art, prints and labels, photographs, and drawings under the name of the copyright claimant.

All claims to copyright that are found doubtful by the examiners are reviewed by the Revisory Board, consisting of the Associate Attorney, as chairman, the Senior Attorney, and the Executive Assistant. A unanimous vote is required to sustain, revise, or reverse the examiner; and in case of a division of opinion, final action is determined by the Assistant Register or the Register.

The Accounting Section (a Chief, Assistant Chief, and 3 clerks) receives each day from the Scheduling Unit of the Mails, Files, and Search Section the remittances received for copyright fees, and maintains a complete record of all financial transactions for each day's business. These remittances are deposited with the Treasurer of the United States daily.

The volume of copyright business has always been a fair barometer of business conditions generally. The figures for the fiscal year 1943-4, for example, showed a material increase in business over the preceding year. Registrations advanced from 160,789 to 169,269, or 5.6 per cent, and gross receipts from \$324,300.99 to \$333,270.24, about 3 per cent. Although 'books proper,' i.e. bound volumes printed in the United States, fell from 8,656 to 7,585 (or 12 per cent), there was a significant increase in the number of English books registered for ad interim copyright (517 to 602). The decrease in registrations of American books, doubtless attributable in part to paper shortage, was compensated, statistically and in the amount of copyright business, by an increase in the registrations of other book material (pamphlets, leaflets, and contributions to periodicals).

# The Subject Matter of Copyright

THE PRESENT UNITED STATES COPYRIGHT LAW offers protection to all original writings of an author. No mention is made of literary quality, of artistic merit, or of the purpose of the author; advertisements, symphonic compositions, Limericks, telephone books, cartoons, epic poems, architectural designs—these are but a few of the varieties of writings embraced by the law. Even the definition of ‘originality’ is stretched to its utmost limits. In reply to an infringer who attempted to justify his theft of copyright material, one presiding judge blandly declared that there could be little force to the argument that copyright material must have originality. ‘Very few literary, musical, or artistic ideas,’ he said, ‘are really novel.’

The Act itself enumerates various reworkings of material that are entitled to independent copyright: compilations, abridgments, dramatizations, translations—or broadly, ‘other versions.’ The copyrightability of the contribution of the second ‘author’—the editor, adaptor, translator, or dramatist—lies in the exercise of his judgment and selection, his creation of a new form and expression of the ideas of the original author, though the essential ingredients remain the same.

For copyright resides essentially in ‘expression,’ in the relation of words, sentences, paragraphs, or any other units of the expression of ideas, to each other—in the choice of language and sequence. The idea itself, once it is expressed, is free to the public. An author who related to his friend a short story he was about to write would have no redress if his friend proved false and published the tale himself. But if our first author had written his story, and given the manuscript to his friend to read, he would have grounds for a suit if his friend’s story plagiarized his in expression or sequence of events. The author’s property right in his expression of an idea can be defended at common law the moment that expression is put into writing.

To return to the variety of writings included in the subject matter of copyright, the law itself enumerates thirteen different ‘classes’ of works, each with several subdivisions, in one of which each work should be placed when application for registration is being made (see

Classification). The most important of these from the point of view of most book and magazine publishers and authors are the first two—‘books’ and ‘periodicals, including newspapers.’ In the first, all sorts of things not commonly regarded as books are included: advertising leaflets and catalogues, magazine articles, short stories, poems, dictionaries, atlases, anthologies, directories, contributions to newspapers and journals if they are not just plain factual ‘news,’ essays and collected essays, any written description or text accompanying non-copyright material such as games, mechanical devices, or other things for use, picture books, art catalogues, maps that have extended accompanying text, single cards that have pictures and text, novels or non-fiction published serially or in installments, encyclopedias—practically any written published expression of an idea. The physical form of the ‘book’ is unimportant; it may be bound, stapled together, or just folded; it may be printed, photographed, plated, mimeographed, typewritten, or, conceivably, handwritten or lettered, if copies are actually sold or publicly distributed in that form. This expansive definition of ‘book’ must be thoroughly understood if the proper application form for registration is to be selected. A poem published in a newspaper, if it carries a separate copyright, is a ‘book.’ Then, if the same poem has several stanzas and some illustrations added to it, and it is printed in a folder as a Christmas card, it is a ‘reissued book.’ Any collection or compilation is registered as a book, whether it be of pictures, published plays, lyrics from musical comedies, or what-not; tables and charts are books; the published description of a motion picture is a book; interest, tax, and wage tables are books.

‘Periodicals’ include magazines, daily and weekly newspapers, quarterlies, ‘proceedings’ of conventions and meetings if they are published more than once yearly, bulletins, serial publications, literary journals, reviews—anything that would be second-class matter in the mails. The contributions to periodicals if they bear a separate copyright are not ‘periodicals’ but ‘books.’ If they have no separate notice, but are covered only by the general copyright on the periodical, the author may have a separate copyright assigned to him after publication, if his contract or agreement with the publisher so states.

In addition to books and periodicals, there are eleven other classes of material subject to copyright: Lectures, sermons, drama, music, and motion pictures—works that depend chiefly on presentation or performance, which can be copyrighted before publication or after,

and to which are granted performing rights as well as publication rights; products of the various graphic arts—design, architecture, drawings, maps, photographs, most of which can also be copyrighted before publication. The scope of copyright is indicated by the list of subjects given on pages 72-3 in the article on Classification, most of which are dealt with specifically in the text of this book.

To complete the picture of the subject matter of copyright, especially that of 'books,' its obverse should be examined. A play or musical play, though published in book form, is not a 'book' but a 'drama.' The libretto of an opera is a 'drama,' even if published as a book without the music. (But selections from it are a book.) An advertising circular with pictures and/or text, if it has only four folds, is not a 'book' but a 'print.' More than four folds—two or more sheets—are a 'book.' An advertisement in a periodical is not a 'contribution,' but a 'print.'

In addition there is a whole body of material not subject to copyright under any classification:

titles of books, magazines, series, radio programs, or any other titles  
names, pen names, trade names, business names  
calendars (having no text or pictures)  
games, dolls, toys, primarily for use, not 'perusal' (as a card game)  
legal forms, without original matter  
slogans, mottoes, 'wisecracks,' and gags  
blank books, record books, checks, journal books, index cards, or other  
material designed for physical use rather than perusal  
ideas, plots, themes, apart from their literary expression  
price lists, railway tickets, and time tables  
standardized expressions, clauses, phrases  
mere 'aggregation' of old material, as opposed to a 'compilation'  
systems, schemes, methods, plans  
immoral, seditious, or piratical works  
news, facts  
works in the public domain  
government publications  
works on which copyright has expired  
works published abroad on which no United States copyright has been  
secured  
works that have been published and sold in the United States without  
notice

# How to Copyright Literary Property

FOR A WORK to be eligible for copyright in the United States, its author must be (a) a United States citizen; (b) an alien making his residence \* in this country at the time of the book's first publication; or (c) a citizen of a country with whom the United States has reciprocal copyright relations (see International Copyright Relations).

The claimant of copyright must be (1) the author himself; (2) a proprietor who has derived his title directly from the author; or (3) an executor, administrator, or assignee of the author or proprietor. If the author himself could not claim copyright protection as a United States citizen or domiciled resident, or as the citizen of a country having a copyright agreement with us, neither can his proprietor or assignee.

Books † and periodicals (magazines, journals, newspapers, et cetera) in the English language offered for sale or publicly distributed in the United States must be completely manufactured and bound in this country if protection is to be claimed. The only exceptions are books for the blind, which may be imported from abroad, and books of foreign origin, which are protected by a temporary copyright while their American edition is being manufactured here (see Ad Interim Copyright). Books of foreign origin in a foreign language may be copyrighted here without having been manufactured in this country, providing they comply with our laws in other respects.

To secure copyright for any work that may be classified as a 'book' or 'periodical' (qq.v.), the first step is to publish it with the proper notice—Copyright, year, name of claimant (see Notice). In the case of a book, the notice must be on the title page or the verso of the title page—i.e. the page immediately following. In periodicals and newspapers, the notice may appear on the first page of the text, in-

\* The Copyright Act reads 'domiciled.' This is usually interpreted as 'residing with intent to remain,' but there are dissenting opinions. It is safe to assume, however, that the casual tourist is not intended to come within the meaning.

† Throughout this volume, 'book' means any material registered under Class A, regardless of its physical form: i.e. story, novel, poem, non-fiction, pamphlet, et cetera, published with its own copyright notice.

stead of on the title page, but it must appear once in each separate issue. If a contribution to a periodical bears a separate notice, it should be on the first page of the contribution, to be completely safe. For imported books seeking ad interim copyright, no notice is required, since copies of the foreign edition are imported only for editorial use and will not be offered for sale or publicly distributed.

As soon as the work is published (see Publication) with proper notice, and in accordance with the manufacturing provision (q.v.), application for copyright registration should be made to the Copyright Office. (For proper application form, affidavit of manufacture, and fee, see Applications.) Two copies should be sent for deposit promptly after publication; in some cases 'premature deposit' may be made (see Deposit).

The Register of Copyrights issues to the copyright holder a certificate of registration, stating the name and address of the claimant; the citizenship of the author and, if he is an alien domiciled here, his address; the name of the author, if it is available (an author can remain anonymous if he insists); the title of the work; the dates of deposit and of publication; and the class designation and entry number. He also acknowledges the receipt of the affidavit of manufacture, if one was required. This certificate bears the seal of the Copyright Office and is admitted in any court as *prima facie* evidence.

Although books in foreign languages by non-resident foreign authors need not be manufactured in this country to secure copyright, if they are sold here they must bear the proper notice in order to be protected. If their first publication takes place here, two copies must be deposited, with the application for registration and the fee, but if they are published abroad, only one copy need accompany the application.

Unpublished manuscripts of books, stories, poems, articles, or anything that may reasonably be included in Classification A, 'books,' cannot be copyrighted before publication. The worried or wary author will find comfort in knowing that his opus is protected by his common-law rights (q.v.). Lectures and sermons, and dramatic, radio, and musical works not 'reproduced in copies for sale' can be copyrighted without publication. In this case, although no notice of copyright is required, the copyright claimant must file one complete copy of his work, with the proper application form and fee (\$1). If these works are later published, then two copies of the best edition must

be deposited, with the usual application and fee of \$2 for registration. The copyright date remains that of the first registration.

The period of the copyright is 28 years from the date of publication, ending then unless the copyright is renewed for a second 28 years. For most books, the application for renewal must be made in the name of the author, or if he is dead, his widow, his children, executors, or his next of kin (see Renewals). In the case of posthumous works, or of periodicals, cyclopedic or composite works, or works copyrighted by an employer or corporation hiring someone to do the work, if they were copyrighted by the proprietor originally, the proprietor of the copyright is entitled to the renewal. Application for renewal must be made within the last twelve months of the original term.

# Outline of the Act of 1909

*A résumé of the sections most pertinent to the author, publisher, and agent of literary works\**

§ 1. The rights conferred:

- To print, publish, copy, and vend
- To translate or make any other version
- To dramatize, if non-dramatic
- To deliver or authorize delivery, if a lecture, sermon, address, or similar work
- To 'novelize'
- To perform publicly } if a drama
- To record
- To complete, execute, and finish, if a model or design for a work of art
- To arrange or adapt
- To perform publicly for profit } if music
- To license recordings . . . \*

§ 2. The author retains unlimited right at common law or in equity to prevent the copying, publication, or use of his unpublished work without his consent, and to obtain damages therefor.

§ 3. The copyright on a work protects:

- (a) All new copyrightable parts of the work.
- (b) All material in the work that has already been copyrighted, but without lengthening the term of copyright on this material.
- (c) In composite works and periodicals, each copyrightable component part, as if it were individually copyrighted.

§ 4. All the writings of an author are subject to copyright.

§ 5. In applying for copyright registration the material should be classified in one of the following groups:

- (a) Books, including composite and cyclopedic works, directories, gazetteers, and other compilations

(b) Periodicals, including newspapers

(c) Lectures, sermons, addresses, or similar material prepared for oral delivery

(d) Dramatic or dramatico-musical compositions

(e) Musical compositions

(f) Maps

(g) Works of art; models or designs for works of art

(h) Reproductions of works of art

(i) Drawings or plastic works of a scientific or technical nature

(j) Photographs

(k) Prints and pictorial illustrations, including prints and labels used for articles of merchandise

(l) Motion-picture plays

(m) Motion pictures other than photoplays

These classes do not limit the subject matter of copyright and an error in classification will not invalidate or impair the copyright.

§ 6. The following kinds of writings become new works, subject to independent copyright, when they are created either from material in the public domain or from copyrighted material with the consent of the copyright owner:

compilations	translations
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abridgments	new editions with
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adaptations	new copyright
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arrangements	matter
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dramatizations	new versions
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However, the copyrighted publication of these works does not affect the validity of any copyright in the source material, or extend its duration; nor

\* All clauses not relevant to the literary author or publisher are omitted, as are also the details on penalties for infringement. The Act is given in full on pages 228-35.

## OUTLINE OF THE ACT OF 1909

does it prevent others from making a similar use of the same material.

§ 7. There is no copyright on the following material:

Work in the public domain

Work published before 1 July 1909  
and not at that time copyright in  
the United States

Any publication of the United States  
Government or any reprint from  
government publications.

However, the use of copyrighted material in a government publication does not annul the copyright, nor does it authorize further use of such material without consent of the copyright owner.

§ 8. The author or proprietor, or his executor, administrator, or assigns, is entitled to copyright when

- (a) he is a United States citizen, or
- (b) he is domiciled in the United States at the time of the first publication of his work, or
- (c) he is a citizen of a foreign state that grants by treaty, convention, agreement, or law to United States citizens the same copyright benefits it grants to its nationals; or substantially the same copyright protection given foreigners in the United States; or is party to an international agreement that provides for reciprocity in copyright, which the United States may join if it wishes. These states shall be designated by the President by proclamation . . .

§ 9. Copyright is secured, by a person entitled to it, by publishing the work with a copyright notice affixed to every copy published or offered for sale in the United States, except in the case of books seeking ad interim protection under § 21.

§ 10. Copyright registration may be made by complying with the provisions of the Copyright Act, including the deposit of copies. Upon compliance, the Copyright Office will issue a certificate of copyright.

§ 11. To copyright works not produced for sale, the copyright proprietor must deposit, with claim of copyright, 1 complete copy of a lecture or similar work, or dramatic, musical, or dra-

matico-musical composition . . . If the work is later reproduced in copies for sale (published) the copyright proprietor must make a second deposit as outlined in §§ 12-13.

§ 12. Registration of published works:

After publication with notice,\* the proprietor must deposit in the Copyright Office 2 complete copies of the best edition; or

If the work is by a foreigner and is published in a foreign country, 1 complete copy of the best edition; or

If the work is a contribution to a periodical, for which special registration is requested, 1 copy of the issue or issues containing it . . .

§ 13. Penalty for failure to deposit:

If the copyright proprietor fails to make deposit, as outlined in § 12, the Register of Copyrights may any time after publication demand deposit within 3 months from any part of the United States, or 6 months from an outlying possession or a foreign country. If the deposit is not made then, the copyright proprietor is liable to a fine of \$100 and twice the retail price of the book, and the copyright becomes void.

§ 14. Deposit copies may be mailed free by being given to the postmaster, who will give a receipt if requested.

§ 15. Manufacturing provision:

Printed books and periodicals as specified in § 5 (a) and (b) must be printed from type set within the limits of the United States . . . or from plates made within the limits of the United States from type set therein, or if the text is produced by a lithographic or photo-engraving process, the process must be wholly performed within the limits of the United States, as must also be the printing and binding. This extends also to illustrations produced by lithography or photo-engraving, except where the subjects illustrate a scientific work or a work of art that is located in a foreign country. This does not apply to works in raised characters for the blind, or to books published abroad in English seeking ad interim copyright, or to books of foreign origin in a for-

\* Deposit of certain Class A material (Books) before publication is now permitted by the Copyright Office (see page 79).

esign language, or to works printed or produced in the United States by any other process.

§ 16. Affidavits setting forth that the books have been manufactured in accordance with the provisions of § 15 must accompany the deposit copies. The affidavit must be under an official seal, made by the copyright claimant, his agent, or the printer, and must state where the work was done, and the date of the completion of the printing, or the date of publication.

§ 17. Anyone deliberately making a false affidavit is liable to a fine of not more than \$1000 and forfeiture of the copyright.

§ 18. The copyright notice in a printed literary, musical, or dramatic work consists of Copyright or Copr., the year of publication, and the name of the copyright proprietor . . .

§ 19. One notice of copyright must appear in each volume of a set of books or each number of a newspaper or periodical:

In a book or other printed publication, on the title page or the page immediately following it.

In a periodical, on the title page or the first page of text, or under the title heading.

In a musical work, on the title page or first page of music . . .

§ 20. Omission of notice through error:

If the copyright proprietor has sought to comply, the omission of the notice by mistake or accident in one copy or a few copies will not invalidate the copyright or prevent recovery from a deliberate infringer. However, in the case of an innocent infringer, the copyright owner must reimburse his outlay before a permanent injunction will be made.

§ 21. Ad interim copyright:

A book in English first published abroad may secure ad interim copyright protection by the deposit of 1 copy in the Copyright Office, not more than 60 days \* after its foreign publication, with the request for reservation of copyright. This must state:

The name and nationality of the author

The name and nationality of the copyright proprietor

The date of publication.

The copyright thus secured is good for four months,\* after the deposit.

§ 22. American edition of books having ad interim copyright:

When the American edition is published, within the four-month period, and in compliance with the terms of the Copyright Act in regard to manufacture, notice, affidavit, registration, and deposit, the copyright is extended for the full term.

§ 23. Copyright endures for 28 years from the date of first publication, plus a renewal term of 28 years.

In the following cases the proprietor makes the renewal:

(a) Posthumous works, periodicals, cyclopedic or composite works in which the copyright was originally secured by the proprietor.

(b) Works copyrighted by a corporate body, otherwise than as an assignee or licensee of the individual author.

(c) Works copyrighted by an employer for whom the work was done for hire.

In all other cases, including contributions of individual authors to periodicals or to cyclopedic or other composite works, the renewal is made by the author, if he is still living; if not by

(a) the widow (or widower) or children of the author

(b) if no widow or children, by the author's executors, or, in absence of a will, his next of kin.

The application for renewal must be made and registered during the last twelve months before the original copyright expires . . .

§ 25. . . . Anyone who infringes a copyrighted work is liable to

(a) injunction restraining the infringement

(b) damages covering what the copyright owner has lost and all profits the infringer has made . . .

(c) the surrender of the infringing material

\* In wartime the time is extended indefinitely by presidential proclamation.

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(d) the surrender of the plates, et cetera, used in printing the material . . .

§ 28. Deliberate infringement for profit is a misdemeanor and punishable by imprisonment, fine, or both. However, the use of religious or secular works, such as cantatas, oratorios, masses, et cetera, for charitable or educational purposes is not prohibited.

§ 29. Anyone who uses a copyright notice fraudulently on material that is not copyrighted, or removes or alters a valid copyright notice, is punishable by a fine of from \$100 to \$1000. Anyone who knowingly sells a work with a false copyright notice, or imports one into the country, is liable to a fine of \$100.

§ 30. The importation of any article bearing a false copyright notice or of piratical copies of books that are copyrighted in the United States is prohibited.

§ 31. During the existence of the American copyright on a book it is forbidden to import either piratical copies or authorized copies not manufactured in accordance with § 15 of the Copyright Act. In regard to the latter, however, there are the following exceptions:

(a) Works in raised characters for the use of the blind.

(b) Foreign newspapers or magazines, even though they contain material in English copyrighted in the United States if it is authorized; unless they also contain unauthorized material holding a United States copyright.

(c) The authorized edition of a book in a foreign language of which only the English translation is in copyright here.

(d) Any authorized foreign publication under the following conditions:

(1) If only one copy is imported at a time, for individual use and not for sale. This does not apply to a foreign reprint of a book by an American author copyrighted in the United States.

(2) If it is imported by the authority of or for the use of the United States.

(3) If only one copy is imported at a time, for use and not for sale, by or for a religious, educational, literary, scientific, or philosophical society or school or library.

(4) If books of this type are part of a library or collection purchased *en bloc* for the use of institutions or libraries listed in (3), or are part of a library or personal baggage of people arriving here, and are not for sale.

However, if books imported in this way are used to violate the rights of the United States copyright owner, or limit his copyright protection, they will be considered infringement.

§ 32. Books imported illegally are seized and destroyed. However, authorized editions of copyright books may be returned to the country of export if it is proved in a written application to the Secretary of the Treasury that their importation does not involve wilful negligence or fraud . . .

§ 34. All actions or proceedings in regard to copyright are originally under the jurisdiction of the United States district courts . . .

§ 41. The work copyrighted is distinct from the copyright itself, and the owner may sell or give away the material object (manuscript) without transferring his rights. In the same way, the assignment of the copyright does not imply that the material object must be transferred too.

§ 42. A copyright may be assigned, granted, or mortgaged by a written statement signed by the proprietor, or it may be bequeathed by will.

§ 43. An assignment of copyright executed in a foreign country must be acknowledged before a consular officer or secretary of legation of the United States authorized to administer oaths.

§ 44. Every copyright assignment must be recorded in the Copyright Office within 3 calendar months if it is executed in the United States, 6 calendar months otherwise, or it will be void against any subsequent purchaser, without notice, whose assignment has been recorded.

§ 45. The Register of Copyrights will record the assignment, upon payment of the required fee, and return

it to the sender with a certificate of record. A certified copy of it will be furnished to any one who wishes it, on payment of a fee.

§ 46. When a copyright has been assigned and recorded, the assignee may substitute his name for that of the assignor in the copyright notice . . .

§ 55. The Copyright Office furnishes the copyright claimant a certificate of registration containing the name and address of the claimant, the nationality of the author, and, if he is an alien domiciled in the United States, his address, the author's name if it is given in the application, the title of the work, the date of the deposit of copies, the date of publication, class designation, and entry number. In the case of a book, it also states the receipt of the affidavit and the date of the completion of printing or publication. This certificate is admitted in any court as *prima facie* evidence of the facts stated in it. A receipt for the deposit copies will also be furnished on request.

§ 56. All copyright registrations and assignments are indexed and catalogued. The Copyright Office indices and catalogues are admitted in court as *prima facie* evidence of the facts stated in them regarding any copyright registration . . .

§ 58. All indices, record books, and deposits in the Copyright Office are open to the public and copies may be made upon request.

§ 59. The Librarian of Congress determines what deposit copies shall be transferred to the permanent collection of the Library of Congress and what shall be placed in the reserve collections for sale or exchange, or be transferred to other governmental libraries.

§ 60. The Librarian of Congress and the Register of Copyrights jointly decide what records and deposits should be kept permanently and what may be

destroyed after a given time. A catalogue is published listing the years of receipt of the material to be destroyed so that any copyright claimant may claim material he wishes to preserve. No manuscript of an unpublished work is ever destroyed during the term of the copyright without the copyright proprietor's first being notified.

§ 61. Fees:

Registration: \$2 for published works; \$1 for published photographs if no certificate is requested; \$1 for unpublished works

Recording and certifying assignments, or for a copy of an assignment: \$2 for each Copyright Office record book page or fraction over  $\frac{1}{2}$  page

Recording transfer of proprietorship of copyright articles, 10¢ a title, in addition to the fee above

Comparing any copy of an assignment with the record, \$2

Renewal of copyright, \$1

Search, \$1 for each hour of time

Only 1 registration and 1 fee are required when several volumes of the same book are deposited at the same time.

§ 62. The 'date of publication' is the earliest date when copies of the first authorized edition are placed on sale, sold, or publicly distributed by the copyright proprietor or under his authority . . . 'Author' includes an employer in the case of works done for hire . . .

. . . Beginning 1 July 1940 copyright registration of prints and labels was transferred from the Patent Office to the Copyright Office. The fee for registration of a print or label (not a trademark) is \$6.

. . . Copyrights on prints and labels are renewable through the Copyright Office at the end of 28 years.

# Check List for Copyrighting a Literary Work

## I. Is the author entitled to copyright protection?

- (a) Is he an American citizen? or
- (b) Is he a resident of this country? Do you have his address? or
- (c) Is he a citizen of a country with which the United States has reciprocal copyright relations?
- (d) Has he preserved common-law copyright in his work by never having sold, assigned, or licensed it to anyone else in the United States; by never having publicly sold or distributed copies of the manuscript in the United States; and by never having dedicated it to the public?

If (a) (b) and (c) or (d) is answered in the negative, his work *cannot* be copyrighted in the United States.

## II. Is the material subject to copyright?

- (a) Is it an 'original' writing? or
- (b) Is it a new version of material already published?
  - (1) Does it have new copyright material such as additional chapters, notes, commentary, introduction, index?
  - (2) Is it an adaptation, abridgment, translation, compilation, collection, anthology, dramatization?
  - (3) If the material on which it is based is not in the public domain, does the author have permission of the copyright owner(s) to use the material?
  - (4) Does he have permission from the present copyright proprietor for all quotations from copyrighted material?
  - (5) Is the work free of infringing, plagiarizing, blasphemous, obscene, seditious, and libelous material?
- (c) Has it ever been published, publicly distributed, sold or placed on sale in the United States before? If it has,
  - (1) Did it carry a United States copyright notice? (If so, it cannot be copyrighted again unless it has substantial new material added or is a new version.)

- (2) If it is of foreign origin and in the English language, did it secure ad interim copyright, or is it now seeking it?

III. *If it is in English and is a book or periodical or contribution to a periodical, has it been manufactured in accordance with the copyright requirements?*

- (a) Has it been completely printed, plated, or photographed in this country?  
(b) If there are illustrations, have they been photo-engraved or lithographed in this country? *or* Are they reproductions of scientific or artistic subjects located abroad?  
(c) Has it been bound in this country?

If the answer is 'no' to (a) (b) and (c) the book cannot be copyrighted.

IV. *Is the copyright notice properly inserted?*

- (a) Is it on the title page or back of the title page, if it is a book, or on the first page of text or under the title heading, if a periodical?  
(b) Is it worded properly (copyright, the year, the name of the copyright holder)?  
(c) Is the name of the proprietor in the notice the same as that specified in the contract with the author? (A copyright proprietor must be able to trace his title to the author.)  
(d) Does the year correspond with the year of *first* publication?  
(e) If this is a reissue with new copyright material, does the year of the new publication appear?

V. *Have you sent deposit copies?*

- (a) Were two copies of the best edition sent, if it was a book, magazine, or newspaper?  
(b) If they were sent before publication, was a 'premature deposit slip' with the probable publication date enclosed?  
(c) Was one copy sent, if it was an ad interim book or book in a foreign language published abroad?  
(d) Was one complete copy of the periodical sent if it was a contribution to a magazine or newspaper, bearing a separate copyright notice?  
(e) Were the deposit copies properly wrapped, addressed to the Register of Copyrights, Washington, D. C., with your return address, and no enclosures or letters attached?

**VI. Is the application for registration in order?**

- (a) Is it classified properly? (Do not select an application form until you have considered *all* alternatives.)
- (b) Is the form filled out properly?
- (1) Does the name of the copyright owner correspond with that in the notice in the book?
  - (2) Is the author's name spelled properly, and does it correspond with that on the title page?
  - (3) Is the author's citizenship stated? His address given, if he is an alien?
  - (4) Does the title of the book correspond with that on the title page? (*Not* that on the spine or on the jacket.)
  - (5) Is the correct publication date given? Does it correspond with that given in the affidavit?
  - (6) If this is a translation of a published work, is the name of the translator given? (The translator is the author of a translation—the original author is not.)
  - (7) If this is the American edition of an ad interim book, or of a book in English first published abroad, is the date of the foreign publication given as well as the American publication date?
  - (8) If it is a book that has been previously published serially, is the nature of the new material indicated? The dates of the serial publication given? (Form A6)
  - (9) If it is a contribution to a periodical on which separate copyright is requested, is its classification checked? The title, date, page, and address of the periodical in which it appeared given? (Form A5)
  - (10) If it is a reissue (a new edition of a book or the book version of magazine material) of a work previously published, is the new copyright matter described? (A2)
  - (11) If it is a periodical, is the date of actual publication (public release) given, not just the date given on the cover? Is the name of the deposit account given?
- (c) Is the affidavit properly filled out?
- (1) Is the status of the person making it checked?
  - (2) Are the state and county in which it is made given?
  - (3) Is it dated on or after the date of publication?
  - (4) Does the date of publication agree with that given in the application?

CHECK LIST FOR COPYRIGHTING A LITERARY WORK

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- (5) Is it signed?
- (6) Is it notarized and sealed?

VII. *Is the proper fee enclosed (\$2 for published works, \$1 for unpublished)?*

- (a) Is it a money order or certified check?
- (b) If not, do you have a deposit account, and is the name under which it is held indicated on the application form?

VIII. *If it is a renewal, is it being made in accordance with the law?*

- (a) Is it being renewed in the name of the proper person?
  - (1) the author, if he is living
  - (2) the widow(er), children, executor, or next of kin, if the author is dead.
  - (3) the proprietor, if it was a posthumous book, or a compilation, periodical, cyclopedic work, or one made for hire, and originally copyrighted by the proprietor.
- (b) Is it being made within the last 12 months of the first copyright term?



## PART II



# Abridgments and Adaptations

ABRIDGMENTS OF WORKS in the public domain, or abridgments of copyrighted works authorized by the copyright owner, are regarded as new copyrightable material, and on first publication can be registered under classification A1. To be entitled to copyright, the abridgment must be the result of intellectual labor, of the 'exercise of reason, judgment, and taste.' If it is of material in the public domain, its copyright will protect only the new form and any editorial notes or changes; another person is free to make a second abridgment of his own, using the original source, and to copyright his abridged version.

So far as the abridgment of material still under copyright is concerned, the Copyright Act grants to the original author the right to make 'any other version' of his work. Hence an abridgment made without permission of the copyright owner constitutes infringement. If the author makes the abridgment himself, it is not necessary to secure new copyright. If there are substantial alterations, a new copyright may be justified, but as the law states that there can be only one copyright on a work, the author must guard against copyrighting the same material twice. This would throw the whole book into the public domain.

An abridgment in a 'digest' magazine is entitled to a new copyright, either by the original copyright owner or by the digest magazine, according to the terms of the contract. It should also carry the notice of its original publication.

A plot résumé in a book of stories of the opera has been declared 'fair use.' On the other hand, a digest of a textbook, given in installments to pupils on separate mimeographed sheets at successive class meetings, has been declared an infringement. In this case (*Macmillan Co. v. King*), some of the sheets gave quotations from the text, some a digest, and some abridgments. The author and source were given in each instance, and only parts of the book were included. However, the author's permission was not asked, and he successfully demonstrated that the sale of his book would eventually be affected by the continued use of the abstract. In infringement of abridgments and

adaptations, the question is whether so much has been reproduced that the author's right to make 'other versions' has been violated; also, whether the use of the material competes with the original work.

Included in the right to make 'other versions' of his work is the right to adapt it to various other purposes. When an adaptation is made by anyone other than the original author, but with his permission, if it is original and creative it in turn is subject to its own copyright (application form A1). To meet this requirement it must not be a mere copy of the original, verbatim but with deletions. It must retain the essence of the work, but be something different in form and structure. A complicated historical novel retold for children is a type of adaptation justifying a new copyright.

Adaptations of copyright material without the author's consent are infringements. When a license is granted for an adaptation or abridgment of copyright material, it is usually assumed to be exclusive. However, this is really determined by the specific contract.

In most European countries the original author has a 'moral right' in regard to the new version, even though he grants a license for the adaptation. He can object, for example, if his tragedy is given a comic ending. A case on record concerned a German artist's objection to having the nude figures in his painting clothed when the painting was adapted for use as a mural. Most American courts do not recognize this 'moral right' if there is an assignment or license, unless the contract states that the final version must have the author's approval, or the subsidiary work defames character or results in a libel suit.

As in the case of abridgments, any work in the public domain is free to all for adaptation, and if the adaptation is 'creative' it may be registered for copyright. However, this does not give the author any exclusive right to the original source material, which may be used by anyone else.

# Ad Interim Copyright

*Form A4, deposit 1 copy, fee \$2.*

To SECURE AD INTERIM COPYRIGHT for a book in the English language published abroad, send to the Copyright Office for deposit, not later than 60 days after its first publication:

- (a) an application (Form A4; see page 205) for ad interim registration
- (b) one complete copy of the original foreign edition
- (c) the registration fee of \$2.

(a) The application to be used is Form A4. Note that full details of the first publication must be given on lines (6-8).

(b) The deposit copy: The Copyright Act does not specify that the 'best edition' need be deposited for ad interim copyright protection, but it does require a 'complete' copy. Therefore, any complete available edition will probably be accepted. As the foreign copy will not be published here, it is exempt from the requirement of a copyright notice. In fact, if it has a copyright notice, it may be barred from importation. It should be remembered that the deposit copy must be in the Copyright Office within the 60 days allowed by law, not just 'in the mail.' (But see *Wartime provision*, page 35.)

If the material seeking copyright was originally published in a foreign periodical, one complete copy of the issue in which it appeared must be deposited. If it was published serially or in installments, the Copyright Office will accept several issues (as many as have appeared at the time) within the 60-day period, on one application and for one fee. Any remaining installments that appear in subsequent issues can be registered in the next 60-day period, with a new form and fee.

(c) With the application should be enclosed a certified check, money order, or, if the applicant is an established publisher, the firm's check, for \$2. Stamps are not accepted. (See Fees.)

The book may be sent postage free if it is delivered to the postmaster for that purpose (see Deposit). The application and fee must be sent first-class mail, not enclosed with the book or in an envelope attached to the package.

The purpose of ad interim ('in the meantime') copyright is to give

temporary protection to books in English that have had first publication outside the limits of the United States. According to the copyright law, no book in the English language to be sold in this country can bear a copyright notice unless it has been completely manufactured in this country (see page 118). Without some protection, the prospective American publisher of books originating in England, for example, would run the risk of piratical editions being imported or manufactured here (thus putting the book in the public domain) before he could bring out his authorized American edition in accordance with the law. In 1905 an ad interim clause was introduced into the old copyright law, to mitigate in some small degree the evils resulting from the manufacturing requirements. It allowed the copyright proprietor of a foreign book in a foreign language one year to decide whether it was worth while to bring out an American edition—that is, to reprint in this country. This clause was dropped in the Copyright Act of 1909, and domestic manufacture is no longer required for foreign books in a foreign language. For books in English first published outside the United States, the law now provides that by registering his intention, the author (or proprietor) may secure a temporary copyright for four months, protecting the book against importation and piracy while it is being manufactured. Normally, the application for ad interim copyright must be made within 60 days of the foreign publication date. However, during wartime, there are usually exceptions both to this time limit and the time allowed for manufacture (see below).

After ad interim copyright has been secured, the authorized American edition must be published in accordance with copyright law requirements within four months (see below for wartime exception). The proprietor then must register it and deposit two copies of it in the Copyright Office (Form A), with an affidavit of manufacture (see Affidavit) and a \$2 registration fee. The copyright then extends 28 years from 'first publication'—not from the date of application. Although the Copyright Act is not explicit about whether 'first publication' refers to the date of the foreign publication or of the American edition, the former interpretation has been accepted by the Copyright Office in determining renewal dates. The notice should therefore carry the date of the foreign publication, not that of the American edition.

If the American edition has a new title, a statement to that effect should be on the copyright page. This is not required by the copy-

right law, but it will protect the publisher against 'innocent infringers.' Also it is required under laws relating to fair trade.

If a whole book is submitted for ad interim copyright, and only a part of it (a few chapters) is subsequently published, it is not entitled to copyright, according to an opinion of the Attorney General (2/9/10). The reason for this ruling is that the publication of a fragment of the book with a United States copyright would deter any other publisher from bringing out an edition containing the remaining parts, and therefore the American public would effectively be denied any edition of the complete work.

Before ad interim copyright is secured, anyone can import copies of books published abroad in the English language, if they do not infringe the copyright of any American book. After ad interim registration, if the Bureau of the Customs is notified, no more copies may be imported. Should they by some chance get through the Customs and be sold here by authority of the copyright owner, the ad interim copyright would be lost.

In normal times, if there is no available copy for deposit before the 60 days elapse, or if American manufacture cannot be completed before the four-month protection period has expired, it is suggested that the American publisher go ahead with his publication anyway, inserting the proper notice, and apply for copyright registration. So far the Copyright Office has made a practice of accepting late applications, although the validity of the resulting copyright registration has never been tested in court.

*Wartime provision.* Because of the difficulties of transportation and manufacturing during wartime, the United States and Great Britain in March 1944 announced a reciprocal agreement to extend temporarily the 60-day time limit for deposit, and the requirement of completing American publication within four months and British publication within 14 days. A similar agreement was in effect between the Allied countries during the First World War. The 1944 agreement is retroactive to 3 September 1939 and will extend until canceled by presidential proclamation in the United States, and in Great Britain until one year after the war. Both countries have provided for the protection of anyone who incurred liability or expense by producing material that went into the public domain between 3 September 1939 (when Great Britain declared war) and 10 March 1944 (when the agreement was announced).

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# Advertisements

*Form KK, deposit 2 copies, fee \$6.*

*Catalogues, Form A1 (see below), deposit 2 copies, fee \$2.*

COMMERCIAL CATALOGUES and other advertisements that are original or 'creative' are subject to copyright. If it is a catalogue of two or more sheets that is to be protected, it is registered as a 'book,' after publication with notice (Form A1). Advertising circulars of one sheet and individual pictures or cuts are registered as 'prints' under classification KK; each print must bear a separate notice. Certain companies that put particular stress on their newspaper and magazine advertising, using fine illustrations and high-price copy writers, prefer to hold the copyright themselves. These are registered as prints (KK), not as contributions.

Since 1940 the registration of prints and labels has been handled by the Copyright Office. A print has been defined by the Office as an 'artistic work, with or without accompanying text, published in a periodical or separately,' advertising an article or articles of merchandise. A single sheet is a print, even though it is folded four ways, making eight pages, but several sheets folded or clipped together are a book. A label is 'an artistic or a literary work' that is either stamped or impressed directly on the article, or attached to its container. Both print and label must bear a word or words to serve as an identifying title. Before they can be registered they must be published with notice. © or 'Copr.' and the initials of the proprietor is sufficient, if the name appears elsewhere, but the notice must be large enough to be legible; the year date is not required. After publication the application should be filed on Form KK (see page 220) and the statutory fee of \$6 remitted. The information required is the same as that for a book (see page 63), except that line 7 calls for the nature of the merchandise advertised. No affidavit of American manufacture is required.

Every time advertising material is used it must carry the original notice in clearly legible form. Failure in this invalidates the copyright. If the original material was copyrighted as a 'book' (Class A), the

notice must be 'Copyright (or Copr.), the year, and the name of the claimant; © with the initials of the claimant is valid only if the copyright was obtained under the classification KK.

If a book or map is enclosed in a container with descriptive matter on it, the container can be copyrighted only as a label, and must carry a separate copyright notice.

A copyright is not a patent. A merchant or manufacturer cannot monopolize an unpatented article by copyrighting a catalogue in which it is illustrated. Other manufacturers can copyright illustrations of it too, if they work from the original and not from a copyrighted pictorial reproduction. His copyright protects only the actual expression or illustration in his catalogue.

Neither is a copyrighted print or label a trade mark. A trade mark is a symbol (picture, sign, or word) applied to goods to distinguish them from other goods of the same kind. The mark is protected against use on a similar product when a trade mark is registered with the Patent Office, not the article on which it is stamped.

A price list has been held uncopyrightable because it lacks any element of originality. But although 'a mere advertisement of articles' such as a price list is not copyrightable, any advertisement with 'artistic quality' and 'originality' is, and, as Weil points out in his excellent book, it requires very little originality indeed to render it so. A pamphlet in which a list of motor vehicles was given, with the numbers and dimensions of the piston rings of each, was held to be the result of 'labor and research,' and therefore subject to copyright protection, as were also cuts of women's clothing illustrating the season's fashions. It should be noted, however, that only truthful advertisements are copyrightable, since the law will not protect a 'fraud' (misrepresentation).

The question of the legality of copyrighting pictures used for advertising, such as posters, calendars, and postcards, has come before the courts many times. Although in some of the earlier cases the copyright claimants were defeated, in all the more recent cases the courts have upheld them. Justice Holmes declared in a case challenging the copyright of a circus poster, 'Certainly works are not the less connected with the fine arts because their pictorial quality attracts the crowd and therefore gives them a real use—if use means to increase trade and help make money.' Some of the leading cases in which the copyright of advertising material has been upheld have concerned colored photographs of Colorado scenery, catalogues of

cuts and pictures of statuary, a print of a young man clothed only in underwear, and a *Manual for Successful Drug Store Advertising and Merchandising*.

The protection of commercial art is not peculiar to United States copyright law. The Berne Convention includes under 'writings' (*écris en tout genres*) guide books, catalogues, commercial prospectuses, and advertisements. In England the copyright has been upheld on *An Illustrated Book of Shop-fittings*, *The Art and Virtue of Dressing Well*, *The Bath Drug Company's Price Current*, and other trade catalogues. Advocates of our becoming members of the International Copyright Union (by abolishing our copyright formalities and the requirement of domestic manufacture) have stressed the value to be gained by protecting in other lands our superior advertising creations.

Publishers should guard strictly against the use in advertising of any material, whether protected by statutory copyright or at common law, without the author's consent. In most states, laws relating to unfair competition or the right of privacy forbid the unauthorized use for commercial purposes of a name, picture, or even a few quoted words, and publication may be stopped by injunction and result in damages. Laudatory letters should not be used in circulars without the writer's consent. Reviews may of course be quoted, but the practice of deletion in such a way as to obscure the reviewer's true verdict is not condoned and may result in damages.

Since the jackets of books are not protected by the book's copyright, any material used on them is thrown into the public domain unless it carries a special copyright notice.

# Affidavits of American Manufacture

*The verso of Forms A, A1, A2, and A6. See page 208.*

APPLICATIONS for copyright registration of books in the English language must be accompanied by an affidavit certifying that the type-setting, printing, and binding were done in the United States (see Manufacturing Clause).

The Copyright Office furnishes application forms on the back of which are affidavits to be filled out by the copyright claimant, his authorized agent, or the printer of the book. The signatures must be acknowledged by a notary public. The affidavit forms for different classes of book material may vary slightly; however, the sample given on page 208 is typical.

The affidavit form should be filled out with care and rigorously scrutinized before it is submitted. The Copyright Office is constantly being forced to reject affidavits that have been incompletely or erroneously made. Some of the most common errors are:

1. Failure to fill in the state and county in which the affidavit is being made, and to have this data agree with the notary's statement.
2. Giving the name of a corporation or partnership instead of the individual affiant (a corporation cannot take an oath; only a person can). If the copyright claimant is a corporation, partnership, or firm, the affiant is the 'authorized agent'—a representative of the firm authorized to sign contracts and legal documents. He usually is an officer of the corporation, but need not be so necessarily. The printing 'company' cannot sign the affidavit; the printer (a person) can.
3. Failure to indicate the capacity in which the affiant acts. This is done by checking the proper line on the printed form: the copyright claimant, his agent or representative (i.e. the publisher, if the copyright claimant is the author), or the printer.
4. Not giving the exact date of publication, or of the completing of the printing. (The latter is assumed to be the off-press date; not the date of completing the binding or of delivery.) Month and year are not enough. If the date of publication is given, it must correspond with the date given in the application, and must be earlier than, or the same as, the date of the affidavit.

5. Failure to sign as an individual; a corporation or partnership cannot sign. (See 2 above.)

6. Failure to have the affidavit notarized, or to sign before a notary whose power is valid in the county in which the oath is taken.

7. Failure to see that the notary's seal is affixed. The seal is required by the Copyright Act, even though it may not be required on legal documents in the state in which the affidavit is made.

8. Dating the affidavit before the date given for publication. The form reads 'the printing of said book *was* completed on . . .' 'said book *was* published on . . .' (italics mine), and the Copyright Act specifically states that the application should be filed after publication. Hence an affidavit dated before the day of publication or the completed printing is manifestly false and invalid.

9. Finally, inconsistency between the titles, names, and dates in the affidavit and those given on the application or the copy itself.

The Copyright Office will often call attention to errors in affidavits, but occasionally an irregular one will slip through unnoticed. This is not to the advantage of the claimant, as a certificate of registration is worthless to him if the facts on which it was issued do not conform with the law. Also, many cases in which an attempt has been made to justify copyright infringement, because of error in the affidavit, have come before the courts. When the errors are obviously matters of oversight, the court usually rules in favor of the claimant: for example, in one case in which the affiant failed to strike out an alternative statement in the printed form, the court declared that the copyright was not therefore invalidated. In another case an affiant was challenged because the date of publication entered in the affidavit was incorrect. Here the court declared,

. . . a mistake made as to the date of publication in the affidavit attached to the application . . . [does] not in my opinion invalidate the copyright. No prejudice resulted to the defendants or the public, and the misstatement of date is not of a character to justify a finding of purposeful falsehood.

But even though the courts usually protect the innocent though careless claimant, they cannot spare him the loss of time and effort required for his defense. Meticulous care in making out the affidavit will often protect him against the deliberate infringer who uses a technical flaw for his justification.

The penalty for wilfully making a false affidavit is a fine of not more than \$1000 and forfeiture of the copyright. (Copyright Act § 17.)

# Alien Authors

AN ALIEN AUTHOR who is domiciled in the United States (i.e. living here and, according to most interpretations of the word, intending to remain here) at the time of the publication of his work is entitled to the same copyright protection that is given an American citizen. However, his place of residence must be stated on the application for registration. (This is not necessary in the case of American authors.) If he is living here it does not matter whether he is technically a citizen of a country with which we have a copyright agreement or not; nor does it matter whether he is 'stateless,' although in this case the Copyright Office requests that his former citizenship be given.

Domiciled alien authors also enjoy the same common-law rights that citizens do. An infringer would be subject to penalty if he 'copied, printed, published,' translated, dramatized, and so forth, any unpublished manuscript not his own, without the permission of the author, regardless of the author's nationality—in other words, if he stole an unpublished manuscript and passed it off as his own.

Statutory copyright is granted to non-resident aliens only when they are citizens of countries with which the United States has a formal copyright agreement (see page 104). Citizens of those countries may secure United States copyright under the following conditions:

- (a) for an unpublished work, if they have maintained their common-law copyright, according to the terms of our laws (i.e. if they can prove ownership and that the work has never been published in any form in any country);
- (b) for a published work, if they have published it with United States copyright notice, and subsequently register it in the United States with the necessary fee and deposit; or
- (c) if, in the case of a book in the English language, they take out an ad interim copyright covering the period before its complete manufacture and publication in the United States.

It should be noted that any publication or sale in this country of a book without a United States copyright notice precludes the possibility of later securing a United States copyright.

A foreign author who is a citizen of a country with which we have

a reciprocal copyright agreement enjoys all the rights of an American copyright holder, if he complies with the terms of our copyright law (publication with notice, United States manufacture of books in the English language, registration, deposit, and fee). He may license specific rights, protect his work against infringement, assign it *in toto* if he wishes, and renew it at the end of its first copyright term. Countries with which we have reciprocal copyright agreements are so indicated in the list on page 104.

A non-resident foreign author entitled to United States copyright, as outlined above, is not required to comply with our manufacturing requirements if his book is not in English; he need only publish his book with a copyright notice and deposit one copy of his published work (not two). The fee is \$2. He should register his work and deposit it promptly after publication, but if he fails to do so and receives a demand from the Copyright Office, he has six months to comply before he is fined and the copyright is invalid, instead of the three months allowed to those publishing in this country. Failure to include a copyright notice and to comply on demand with our requirements will place his work in the public domain, so far as the United States is concerned.

A foreigner not entitled to United States copyright protection cannot assign rights on his work to an American, since legally he has no rights in our law to assign. It is the country of which the author is a citizen that is the determining factor, not the citizenship of the proprietor. An American copyright may be assigned to an alien, even though the alien could not secure copyright for his own work.

For a further discussion of our reciprocal copyright agreements, see International Copyright Relations, and The International Copyright Union.

# Applications

ONE ESSENTIAL STEP in securing copyright registration is the filing of an application with the Copyright Office. On request, the Office will furnish various application forms; when asking for them, the applicant should state the number and kinds he needs. In general, the forms are divided into the 13 classifications indicated by the Copyright Act (see Classification), with one or two extra types and many subdivisions. The book publisher will usually require only the A and R (Renewal) forms; the magazine and newspaper publisher, the A, B, and R forms, and so forth.

The available forms to be used are:

- A: \* The American edition of a book ('book' [q.v.] = any published literary work except a drama) in English on which ad interim copyright has previously been secured. This form has the manufacturing affidavit \* form on the back.
- A1: \* Any new 'book' printed and published for the first time in the United States. This form also has the affidavit form relating to manufacturing requirements.
- A2: \* A new edition, or reissue, of a book previously published in the United States, with new copyright matter. This classification also includes book versions of material formerly published in periodicals (but not of serial publications), and new versions (editions with new matter) of material in the public domain.
- A3: \* A book in a foreign language first published in a foreign country.
- A4: \* Ad interim copyright for a book in the English language first published in a foreign country.
- A5: \* A contribution—literary, artistic, dramatic, musical—to a newspaper or periodical on which a separate copyright is desired. Each installment of a work published serially should be registered separately on A5.
- A6: \* A book previously published in serial form to which new copyright material has been added.
- B1: \* A periodical, if the fee for each issue is paid separately (see Fees).
- B2: A periodical, if the fee is to be charged against a deposit account (see Fees).
- C: \* A lecture, address, or similar work intended for oral delivery.

\* Indicates that a sample of this form is given in the section on forms, pages 199-222.

- D1: \* A published drama.
- D2: An unpublished drama of which no copies have been printed for sale or public distribution.
- D8: \* A published dramatico-musical composition.
- D4: An unpublished dramatico-musical composition (no copies reproduced for sale or distribution).
- E: \* Music published for the first time.
- E1: \* Music published with new copyright material.
- E2: Unpublished music (no copies reproduced for sale or distribution).
- E3: Unpublished music with new copyright material.
- F: \* A published map.
- G\*: A published design for a work of art.
- G1: A work of art reproduced in copies for sale.
- G2: \* A work of art (painting, drawing, or sculpture, or the model or design for a work of art) not reproduced in copies for sale.
- H: \* A reproduction of a work of art, reproduced in copies for sale.
- I1: A published drawing or plastic work of scientific or technical nature.
- I2: Unpublished material of the same type. (Unpublished relief maps are sometimes registered on this form.)
- J1: A published photograph (copies issued for sale or distribution).
- J2: An unpublished photograph.
- K: \* A printed illustration (see Classification).
- KK: \* A commercial print or label.
- L1: A photoplay reproduced in copies for sale or distribution.
- L2: One not reproduced for sale or distribution.
- M1: A 'non-fiction' motion picture, reproduced for sale or distribution.
- M2: One not so reproduced.
- R: \* The renewal of copyright of any classification except KK (commercial prints and labels) (see Renewals).
- RR: The renewal of copyright on commercial prints or labels.

In addition, there are duplicate blue 'foreign' forms for most classification, for use in registering works first published abroad, or of foreign origin.

Copyright registration is often delayed because the application form has been filled in hastily or carelessly. This wastes the time not only of the Copyright Office, in the extra correspondence, filing, and other clerical work, but also, in the end, of the publisher or claimant. The most frequent error is that of wrong classification. A book of songs for children, with words and music, is not a 'book' but music (Class E). The first American edition of an English book on which an ad interim copyright was previously registered should be classified as A, not A1. It will take but a few extra moments for the person filing the application to check over the list of forms and make sure that his application is on the proper one.

A second frequent type of error is the omission of information—that is, some queries in the application are left unanswered, either through oversight or because the information requested is not easily available. The following omissions are the most usual:

- Name of copyright owner
- Address of copyright owner
- Citizenship of author
- Title of material to be registered for copyright
- Place of publication
- Volume, number, and date of issue of periodical
- Name of printer
- Date of publication
- Name and address of person to whom certificate is to be sent
- Name of account, if fee is to be charged against a deposit fund

Still a third type of faulty application is that in which there is a discrepancy between the data supplied in it and the material sent for deposit. For example, the name of a magazine may be given as the copyright claimant on the application, whereas the copyright notice in the book reads 'by the Blank Publishing Company.' Or the publisher's name is given as copyright claimant when the author really holds the copyright and is so entered in the notice. Memory (or even an office file) should not be trusted. Check against the book.

The following data must correspond exactly with the actual copy of the work to be registered:

- Name appearing in copyright notice
- Title of material to be registered
- Name of author or composer
- Volume and number of periodical or series
- Date of issue

It cannot be stressed too often that the date of publication given in the application must be exact and complete. Copyright runs for exactly 28 years from the date of first publication (or from the date of deposit of an unpublished work). Carelessness in regard to this may allow the book to go into the public domain before the copyright is renewed.

# Architecture

*Published: Form I1, deposit photo or description, fee \$2.*

*Unpublished: Form I2 or G2, deposit photo or description, fee \$1.*

THERE WILL PROBABLY BE no occasion for the reader of this manual to copyright architectural plans or designs. For the record, however, this is how it is done:

The artistic rendering of an architectural work is registered under Class G2 (see page 216). The architect's plans, however, are registered as a 'drawing of scientific or technical character' (I1). In filling out the I application, it is important to mark out the words in the first line of italics that do not apply:

'Of the *Drawing*  
*Plastic Work* . . .'

The plans are a drawing, not a plastic work; the model probably is plastic (which means a physical modelling, not the commercial material 'plastic' now on the market). It is often hard to decide what should be registered on G, what on I. The Copyright Office will probably accept either classification in doubtful cases.

In a court decision it was once ruled that the filing of an architect's plans at the city hall constituted publication of the plans, and that the construction of the building was publication of the model, design, or rendering. Many copyright authorities do not agree with this interpretation, but in view of the fact that it has never been superseded, and that once a work is 'published without notice' it is in the public domain, it is well for architects to copyright their designs and plans before any possible 'publication' in order to 'secure their rights. If major changes are made in them from time to time, new copyrights may be obtained, but minor changes do not justify a new copyright.

A photograph of a building, once that building is constructed, is neither publication nor infringement. Any building actually erected is in the public domain in so far as it may be photographed, sketched, or painted by anyone who wishes to do so. The resulting photograph or 'work of art' may then be copyrighted by its owner, but the copy-

right does not prevent anyone else from making other photographs or drawings of the building.

Architectural plans published in a magazine or newspaper are automatically protected under the general copyright of the periodical. After publication the copyright may be assigned back to the architect or, if the plans carried a separate copyright notice, they may be copyrighted in his name originally and registered on A5 as a 'contribution.'

# Art and Design for Works of Art

*Published: Forms G\*, G1, H, II, K, deposit 2 copies, fee \$2.*

*Unpublished: Forms G2, 12, deposit photo or description, fee \$1.*

THE WORKS OF THE ARTIST, architect, sculptor, and designer are included in the Copyright Act in Classes G to K (see Classification). Products of the industrial arts, even if 'artistically' made, are protected by patent. Inevitably, however, there is much overlapping. An original drawing may have value as 'fine art' in itself and later be used for commercial purposes. Thus the artist sometimes has the choice of applying either for patent or for copyright—he cannot, however, have both.

'A published design for a work of art' (Class G\*) includes designs for drawings, paintings, sculpture, murals, stage designs,\* architectural buildings, even for memorial monuments. Dress patterns, designs for fabrics, toys, or games, and other designs primarily for 'use' may not be copyrighted but may be protected by patent.

'A work of art reproduced in copies for sale' (G1) covers the reproductions of the execution of the designs, listed above.

'Reproduction of a work of art' (Class H; see page 217) refers to photographs, etchings, engravings of a painting, sculpture, or other product of fine art, when the *reproduction* is a new work and has an artistic quality in itself. The fact that the original subject or model is in the public domain does not affect the copyrightability of the reproduction.

Copyright on Classes G\*, G1, and H is obtained in the following way:

A work of art is 'published' (released for sale or distribution by authority of the copyright proprietor) with a notice of copyright. This notice may be a c in a circle, ©, with the initials of the proprietor, providing that some place on it—the margin, back, permanent ped-

\* But it is the *picture* of the projected stage setting that is copyrightable, not the setting itself. A little theatre can use the setting on its stage but not reproduce it (the original) in its journal. It may photograph or otherwise reproduce its own setting based on the copyright design.

estal, or base—the full name of the proprietor appears. After publication, the copyright claimant should send to the Copyright Office:

- (a) The proper application form (G\*, G1, or H), completely filled out;
- (b) two copies of the best 'edition' for deposit (see Deposit);
- (c) a fee of \$2.

Application forms G\*, G1, and H are similar to Form F (see page 215). The following information must be given:

1. The full name of the copyright owner
2. His address
3. The full name of the artist
4. The country of which he is a citizen
5. Title and/or brief description of the work, design, or reproduction  
(This must be filled in, even if there is no 'official' title.)
6. Exact date of publication
7. Name and address of person to whom certificate should be sent
8. Name and address of person sending fee

Form H, for the registration of the Reproduction of a Work of Art, is shown on page 217.

To secure copyright on an unpublished original work of art, or the model or design for one, not reproduced in copies for sale (G2; see page 216), the procedure is a little different.

Send (a) application form G2; (b) a photograph or some identifying reproduction for deposit; (c) fee \$1.

Since works in this class are not reproduced for sale, they need not bear a copyright notice. On Form G2, in addition to the usual information, it is necessary to state the nature of work to be registered: a painting, drawing, sculpture, model, or design for a work of art.

For the registration of a reproduction of a work of art published abroad with the notice of a United States copyright, Form H 'foreign' is used. In this case, send to the Copyright Office (a) application form H; (b) one complete copy of the best 'edition'; (c) fee \$2. The notice in this case may consist of the copyright symbol and the name of the copyright owner. The symbol must be the conventional c in a circle, however; not some artistic variation of it.

Anatomical drawings, architect's working plans, designs for engineering works, graphic charts, relief maps, and plastic works are included in Class I (see Architecture). If the use to be made of the model or design is scientific or technical, it falls in this class. However,

if it is a 'rendering,' an artistic visualization, it belongs in Class G, since it is ornamental rather than scientific.

Class K covers both illustrations (q.v.)—not necessarily of a story, but of something (perhaps women's fashions)—and prints (any decorative motif without any special 'meaning'). Works in this class must be published with notice before they can secure copyright, and if they are reproduced by lithography or photo-engraving, must be produced in the United States. Art used for advertising is registered on Form KK as a 'print.'

Art books are usually registered as Class A (books), as are also collections of cartoons, et cetera. Art reproductions first appearing in a magazine or newspaper are registered as a contribution (A5; see page 116).

Photographs (q.v.) are registered on Form J.

# Assignment

*Send original document; fee \$2 per page plus 10¢ for each title recorded.*

THE ESSENTIAL PARTS of an assignment are:

The title of the material on which the copyright is to be transferred, and its registration number, if it is available.

The full legal name of the assignor (copyright proprietor).

The full legal name of the assignee.

The place and date of the execution of the assignment.

To have an assignment recorded:

(a) Send the original written document to the Copyright Office within the specified time (three months in the United States, six months abroad). It should be sent by registered mail. There need be no fear that it will be lost or destroyed once it is received by the Copyright Office; a photostat is made of it and the original is placed in a fireproof safe until it is recorded. The numbered photostat then becomes part of the permanent file of the Copyright Office, and the original is returned to the assignee with a certificate of record under seal. It will be returned by registered mail if 20¢ is included for that purpose with the fee.

(b) Send a check or money order covering the fee of \$2 for each copyright record page or fraction thereof over a half page that will be required for the photostat. A copyright record page is about legal-cap size paper. As much should be placed on one page as is legible and convenient. Wide margins at top and bottom are to be avoided. If a second page is required, start at the top, not the middle, even though there are only a few lines. A half-dozen lines in the center of the page may run over the half sheet and require a second \$2.

(c) If you wish the transfer of ownership of individual titles to be recorded in the Copyright Office Catalogue and Index, include in the money order or check a 10¢ fee for each title or copyright article on which transfer is made. Thus, if the assignment lists 16 novels on which the copyright is being assigned, \$1.60 will be the fee for having the records of the titles changed, in addition to the \$2(+) fee for recording the assignment, and the 20¢ for return registered mail.

Under the Copyright Act, any copyright may be 'assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.' (Copyright Act § 42.)

There are many reasons for assigning a copyright. It may be assigned by the author to a publisher, when a uniform edition of his work is being brought out. It may be assigned back to the author by a magazine publisher because the author wishes to use the material in another medium. It may be assigned by a magazine publisher to a book publisher when a serial is being published in book form. It may be assigned by the author or publisher to someone to whom he is in debt. It may be assigned by one publisher to another who is buying out his whole business. Or it may be bequeathed by will as a separate part of an estate. Whatever the motive, in order for the assignment to be effective against the claims of any later purchaser or assignee without notice whose assignment has been recorded, it must be made in writing and it must be recorded in the Copyright Office within three months of its execution, if it is made in the United States, or within six months if it is drawn up abroad.

The Copyright Office issues no special forms for assignments, nor can it act as an agent. The written document may be complicated or simple, drawn up by a lawyer or written out by the assignor himself. It should be borne in mind, however, that any statement that does not transfer 'entire and unqualified monopoly' is not an assignment, but a license (q.v.).

Common-law rights may be assigned verbally, and there is no statement in the Copyright Act that a verbal assignment is not binding. However, most countries do require written assignments, and it is certainly safer to have any legal transfer of ownership in writing. Also, the assignment must be written if it is to be recorded, and must be recorded before the assignee can legally substitute his name in the copyright notice. (Copyright Act § 46.)

The signature to the assignment must be the authorized signature of the copyright proprietor. For example, in the case of an article published in *Publishers' Weekly*, the signature would be by an officer of R. R. Bowker Co., not the magazine itself. The usual practice is to have the name of the corporation typed over the signature of the president, secretary, or other officer authorized to perform legal acts.

An assignment executed in a foreign country must be acknowledged by a United States consular officer or a secretary of legation authorized to administer oaths or to perform notarial acts. In any case of a

notarized assignment, the assignee should be sure that the notary has legal authority in the actual place at which the instrument is dated.

The instrument should also state whether it is an assignment, a transfer, or a mortgage. If it is a will or part of a will, the whole portion concerning the copyright should be placed on record.

Blanket assignments ('all the works by author John Doe published and copyrighted by the Book Publishing Company') are not recommended, although the Copyright Office will record them if requested to do so. There is too much danger of later dispute or innocent infringement.

In contrast to English law, United States copyright is indivisible and may be assigned only *in toto*. Specific rights, such as those of dramatization, serialization, translation, et cetera, are granted by license, not assignment. An assignee acquires all the existing rights of the original copyright owner, but he is bound by any licenses or grants made before the assignment. Thus, if A assigns his copyright to B without reservation, he may not later extend a specific license to C. That license can be granted only by B, the new owner. A magazine publisher, having once assigned the copyright on a short story back to the author, can no longer grant movie rights except by specific agreement with the author. Any reservation of rights in making an assignment destroys its validity, making it a mere license. To avoid possible complications, the whole copyright should be assigned, and any specific rights then licensed back to the assignor.

Whereas an assignee has all the rights of the original proprietor, and can sue infringers, a licensee cannot sue for damages in his own name, even though his license has been recorded; he can only sue by joining with the owner (see License).

An assignee cannot claim copyright ownership if the original assignor was not entitled to it. For example, if the assignor was not domiciled in the United States at the time of first publication, and was not a citizen of the United States or of a country with whom we have a copyright agreement, or if he was not the author and could not trace his ownership to the author, the assignment would be void. If a publisher takes out a copyright in trust for the author, even though the publisher is the legal and titular owner of the copyright, he can make no assignment, except when so stated in his contract or agreement with the author, without the author's consent. The author retains his original rights until they are expressly released.

In case of a bankruptcy, the publisher-proprietor's copyrights taken

over by a trustee may be sold or assigned; the assignment should of course be recorded in the Copyright Office. The author, however, retains whatever rights he had according to the original contract of publication. If the new publisher to whom his copyright is assigned does not work the copyright, or fails to fulfil the terms of the original contract, the author can have the title reassigned to himself.

In the past there was some difference of opinion among lawyers and judges concerning the assignment of copyright on magazine stories, articles, and other contributions to periodicals that are included in a single copyright for the issue in which they appear. The prevailing view now seems to be, however, that although the publisher-assignor assigns the copyright on only one part of the whole—i.e. the specific story or article—the assignee (i.e. the author) is properly and legally an assignee, not a licensee (see also Newspapers and Periodicals).

The fact that an assignment has not been recorded does not make it less binding between the two parties concerned, nor does it mean that the assignee cannot protect himself against wilful infringers. He would, however, have difficulty in collecting damages from an innocent infringer who had taken a second assignment in good faith. The recording is valuable in case of a subsequent sale, mortgage, or transfer. Then the proprietor has proof of the validity of his title, and the second party in the transaction can satisfy himself that there are no other assignments or liens against the copyright ownership. The recording of the assignment also makes it possible, as stated in the Copyright Act, for the assignee to use his own name in the notice.

It is important to the author to have the copyright of material that was first published serially or as a contribution to a magazine or newspaper assigned back to him, if no separate copyright was originally secured. Most book publishers will not consider publication of previously published magazine material until this is done. Even if book publication is not imminent, the author should have the assignment made in his own interest. In one case, an author wrote on his contract, 'The author reserves the right of book publication and dramatic rights,' but allowed the publisher to copyright the serial version of his novel. No assignment was later made. The publisher later sold motion-picture rights without consulting the author, who in the meantime had made other moving-picture contracts himself. When he tried to stop the production of the first motion picture by injunction, he failed, because the company had acted in good faith in securing their rights from the publisher.

# Author

A FACT THAT the whole publishing, printing, book-producing world tends to lose sight of is that the protection of the author should be the chief concern of copyright. The purpose of copyright legislation is not to provide employment for publishers, printers, bookbinders, salesmen, paper manufacturers, theatrical and moving-picture producers, labor unions, copyright lawyers, radio sponsors, or even book reviewers. It is to secure to the author a reasonable amount of benefit and profit from his work.

The author is the person who gives written or graphic expression to an idea. His right is in the expression.

The Copyright Act states explicitly the few cases in which the writer of the work is not to be considered the true author: Work done 'for hire,' as newspaper or magazine staff-writing, employee-created house organs, murals painted 'as a job,' photographs taken by paid photographers—these belong not to the person doing the work, but to the employer, whether the employer is an individual or a corporation.

Borderline cases are the works of ghost writers and hired translators of an unpublished manuscript. There have been no test cases to determine the court's attitude, but the Copyright Office leans toward the interpretation that if the 'ghost' or translator is sought out by the author to do the job 'for hire,' he stands in the shoes of an employee. If, however, the 'ghost' conceives the idea, for example, of an 'auto-biographical' account by a person who has had first-hand experience, and creates the structure and expression more or less independently, he would be entitled to the copyright. For complete safety, however, the wise procedure in the latter case is to have the title read '*James McGillicuddy's Account of the Battle of Cyprus* as told to John Doe.' Mr. Doe will then encounter no obstacle in copyrighted the book in his own name. A translator, if he wishes to claim any rights in a book, should also have his name on the title page. In either case a written contract should clearly define the status of the 'ghost' or translator.

1. The first responsibility of an author is to determine whether he is entitled to a copyright for his work. If he is not an 'employee for hire,' as defined above, the answer is to be found in the work itself.

*Is the material heretofore unpublished?* This is easy to answer if it is a newly created short story or novel, but in many cases authors, wittingly or unwittingly, re-use their own published material. Perhaps a chapter or two of this book appeared in a magazine long ago. Perhaps one or two of the poems were published in a copyrighted college literary journal. Perhaps that account of a Diesel engine made its first appearance in a textbook the author wrote two years ago, which was so well done that he incorporated it as part of his new manuscript on *Internal Combustion Engines of Today*. The point is that if an author 'cribs' even from himself, he must give credit to the earlier copyright. Not to do so is manifestly unfair to the copyright proprietor of the magazine or book in which the earlier material appeared, and also weakens the status of the new book, since the new copyright date would appear to prolong the life of an earlier copyright—which is, of course, illegal.

*Is the work original?* There is a discussion elsewhere in this book on that super-intangible, originality (see page 18). An honest author knows if he is deliberately copying the words, expressions, or thoughts of someone else. His danger is in unconscious plagiarism. Perhaps this plot that he thought up last night when he couldn't sleep is an almost verbatim duplication of a yarn he read on the train coming up from the South several years ago, and hasn't thought of since. It might even be something that he has stored in his 'subconscious' mind since childhood. The intention to infringe is not essential to infringement. It is the author's responsibility to be sure his work is his own.

*Is the work a proper subject for copyright?* The over-all range of copyright material is suggested by the classes of subject matter in the Copyright Act (see Classification). Generally, 'all the writings of an author' are subject to copyright. However, there are certain works that might be considered 'writings' that are not subject to copyright: titles, most games, toys, objects designed especially for use rather than perusal (blank books, check books, journal books), clauses, slogans, or mere 'colorable' adaptations of work in the public domain or that has already been copyrighted (see pages 18-15).

*Are all the permissions cleared?* The clearing of quotations from copyrighted works is essentially the author's responsibility. The citing of source is not enough (see Quotations; Fair Use). If the work is to be published in the United States only, the usual procedure is to clear permissions for the United States and, if possible, for Canada. If there

is any possibility of foreign publication, the author should ask for permission to reprint in Great Britain and South America. Sometimes when foreign rights are not held by United States publishers, this involves a long and laborious search and correspondence; if the rights for publication in the United States are all cleared, the author may feel that the mere possibility of foreign publication is not worth the effort to clear foreign rights. However, he should so word his letters asking permission to quote that the replies will be an authentic record of the copyright status of all quoted material. When he quotes from material of foreign origin, even though it bears no United States copyright notice, he should make an effort to determine its copyright status and secure written permission from its legal owner.

*Is the work free from libelous, fraudulent, obscene, and seditious passages?* This question is not essentially one of copyright, but it is one that the author should bear in mind. (a) Any statement injuring the reputation of a living person is potentially libelous. Even if not libelous, any statement invading the 'privacy' of a living person is potentially subject to suppression under the laws of many states. A book in which an author abuses living persons, or deplores their morals or ethics, should be read by a lawyer before publication. Fiction writers have got into trouble by unintentionally injuring someone's reputation. They may think *Jacquelaine Heimpoupqui* is a very amusing name, but if there is a real *Jacquelaine Heimpoupqui* (and I hope there isn't!) she may rightfully take offense at ridicule. The license number of the story villain's car may bring shame to the real owner of the license plate, as will the street address of a fictional murderer to the real resident or property owner. All firm names should be used only with caution. The author who likes to take his characters 'from life' may have no trouble if he depicts only noble, beautiful, and valorous characters; the man who really 'sees himself as others [unfortunately] see him' and knows that his friends and neighbors have the same privilege is apt to get hopping mad and bring suit.

(b) 'Fraud' is the deliberate deception of the public. It would seem that an author could not be innocently guilty of this crime, but sometimes the public is surprisingly easily deceived. When Arthur Train wrote the *Autobiography of Mr. Tutt* his intentions surely were honorable. The *Tutt and Mr. Tutt* stories had been published in leading magazines for years. Yet one person actually threatened legal action when he discovered that the 'autobiography' was a 'hoax.' There was no Ephraim Tutt. More seriously, an American author wrote a novel

that was published as a translation of a European writer's work. The copyright on it was denied because the public was being deceived and because the application for registration gave false information. Many laws concerning unfair trade practices are also designed to protect the public against deception.

(c-d) Obscene and seditious material may be denied copyright protection by the courts. The difficulty is in guessing what the courts will term obscene or seditious. It is like trying to guess what the Postal Authorities will deem immoral and bar from the mails—or what the Hays Office will pass for the motion pictures. Byron was denied copyright on *Cain* in the early nineteenth century. Even his counsel, it is said, admitted the work contained 'much bad taste and many bad jokes.' Southey was denied copyright on *Wat Tyler*. Understandably, publishers tend to be reactionary rather than liberal in matters concerning morals, unless they hope to capitalize on the publicity of public censure. To the conservative publisher, the author's intent will be the deciding factor, rather than the actual words. However, in an infringement suit of James Cain's novel *Serenade*, when the copyright of the book was challenged by an opposing lawyer on grounds of its immorality, the judge declared that the outcome of the story sublimated the otherwise immoral 'church scene'—even though Cain himself denied indignantly that he had intended for it to be so interpreted.

2. The second point to be decided is the form of the notice of copyright. Arguments in favor of the author's having the copyright in his own name are: (a) that a suit against infringers can be instigated only by the owner of the copyright; (b) that if the publisher holds the copyright the author cannot license the various other rights except through the publisher; (c) that even if the publisher assigns the copyright to the author, the notice will be inconsistent with the fact; (d) that if the publisher becomes bankrupt a copyright in the name of the author is not transferable to the receiver and consequently copies cannot be sold without the author's consent.

On the other hand, if one author is solely responsible for the material and is publishing with a well-established house, it actually makes little difference whether the copyright is taken in his own name or in that of the publisher as copyright proprietor, if it is stated in the contract that the copyright is to be held in trust for the author. Practically all material published in magazines is handled in the second way, and is later reassigned to the author on request. Reassign-

ment is especially important with regard to material that is later to be published in book form. A publisher who takes out a copyright for an author in accordance with a definite agreement is morally and legally bound to reassign it to him if the author so desires. However, if the author publishes in many different fields, and with many publishers, he may prefer to have the copyright, especially on books, in his own name from the beginning. He may so have it even in a contribution to a periodical if a separate copyright notice is carried. The publisher of the periodical usually takes care of this for the author, if requested to do so.

Some publishers of leading magazines insist on having complete ownership of all their material, licensing back to the author or book publisher reprint rights, book rights, or rights in any other fields they do not wish to exploit. In this case, when the material is used in any other media, even though it is enlarged or modified, it must continue to carry the copyright notice of its original magazine publication, along with that of the new version, if there is a new copyright.

Suppose there are joint authors. In this case, legally the copyright may be registered in both names, but this is not advisable: either author may then license the work without consulting the other, which sometimes causes considerable confusion. It is better for one author to take out the copyright and hold it in trust for his collaborator—technically, they are ‘tenants in common’—or for the publisher to take out the copyright in trust for both authors. One collaborator may grant a license, but both must be party to an assignment. Renewal can be made by one author for the benefit of (in trust for) the other.

Suppose the author writes under a pen name. There is no clause in the Copyright Act stating that a copyright may not be held under a pseudonym. The Copyright Office, however, discourages the practice. Few pen names are deceptive for any length of time if the author is successful as a writer. Modern librarians ferret out the real name as quickly as possible, and the courts refuse to recognize any violation of privacy in attaching a man’s name to his works, even though he does not wish it. If the author decides to copyright under his pen name in spite of these arguments, or a married woman wishes to copyright under her maiden name, the Copyright Office accepts the registration, but requests that the real name be given in the application (line 3), in parentheses, ‘for the record.’ Presumably a book copyrighted under a pen name should be renewed under the author’s

real name, but there too a cross-reference should be made to the name of registration.

Suppose an author wishes to be anonymous. He may preserve his anonymity if he wishes with the co-operation of his publisher. The Copyright Office 'requests' his name, but does not demand it. The copyright is necessarily in the name of the proprietor, who if challenged in court must trace his claim to the author.

Suppose an illustrator contributes a major part to the copyrighted work. The author of the text copyrights the book as a whole, holding the copyright for the illustrations in trust for the artist. Or, the publisher copyrights the book in trust for both author and illustrator. Or the illustrations may have been done 'for hire' and therefore should be copyrighted by either publisher or author (according to the fact) as an employer.

3. Before publication the author has certain definite common-law rights (q.v.) in his work. He not only owns the physical manuscript but may do with it what he wishes without jeopardizing his rights. He may read it aloud in public, pass it among his friends, submit it to publishers or to authorities for criticism, make copies to give to his friends at Christmas, have it privately printed and bound, so long as he does not allow a copy to be sold or distributed to the public.

He has the right to first publication: he may choose who his publisher will be, when it shall be published (within very round numbers), or, if he wishes, that it shall never be published at all.

He has the right to license certain uses of it without sacrificing his common-law right in the original. He may sell movie rights, dramatization rights, translation rights, all requiring a copyright of the resultant independent product, without copyrighting his own first version. If he goes bankrupt, his unpublished manuscript is safe from his creditors. He may sell it, reserving his own common-law rights; or he may sell it or assign it with no reservation, in which case the common-law rights go with it to the new owner. Common-law rights are lost only by authorized publication. After publication, if the work is published in accordance with the Copyright Act, it is protected by statutory copyright.

The exclusive rights reserved to the author are enumerated in the Copyright Act and cannot be repeated too often.\*

\* The rights reserved to artists and musicians are enumerated elsewhere. See page 19.

To the author of a 'literary work' are reserved the following rights:

1. To print, reprint, publish, copy, and vend.
2. To translate or make any other version.
3. To dramatize.

To the author of a drama are reserved in addition the rights:

4. To convert it into a novel or other non-dramatic work.
5. To public performance (on stage or radio).
6. To make any record or transcription (motion picture and phonograph).

To the author of a lecture, sermon, or similar unpublished address to be delivered in public, is reserved in addition to (1), (2), and (3) above the right:

7. To deliver publicly for profit (stage or radio).

Under (1) are included first and second serial rights, reprint, abridgment, foreign reprint rights, quotation in anthologies, compilations, or even in smaller sections in general books.

Under (2) are included all foreign-language rights, and adaptations, digests, and versions for other media.

Under (3) are included theatrical, dramatization, motion-picture rights, and new versions for radio use (but see Radio).

All of these rights are separately controlled by license. In all contracts the author should see that the rights he licenses are carefully enumerated and that all other rights are reserved to him.

The transference of all rights (by unqualified sale, will, or bequest) is an assignment (q.v.), which cuts the author off from his work forever. Thus a story sold to a magazine without any qualification gives the magazine publisher full title to the work, including reprint rights, book rights, moving-picture and dramatic rights. For his own protection the author should insist on a written agreement specifying what rights he grants and what he reserves for himself. It will suffice if the publisher writes on the back of the check, 'For magazine [or first serial] rights only,' and assigns the copyright back to the author later.

The author's final right is that of renewal (q.v.). He should keep a list of the dates of copyright for all his works, whether published separately or in periodicals, whether the copyright is in his own name or in his proprietor's name. If he feels he will not live to renew his works himself, he should see that this list will go on his death to his widow or executor. (See also Common-Law Rights; Moral Rights; Unpublished Works.)

# Books

*'All original writings, be they an advertisement, a short poem, a direction sheet for a card game, or an item appearing in a column of a newspaper . . . are classified as books. The term "book" is a general term which distinguishes writings from such other copyright subjects as pictures, paintings, music, motion picture films, and the like.'*\*

BOOKS, AS DEFINED ABOVE—or as in Mr. DeWolf's book, 'any article consisting of words not otherwise classifiable'—constitute the class for which copyright laws were originally formulated. A survey of the diverse material that is included in this class is given on pages 69-70. Wide as is the scope of the term for copyright purposes, there is some material normally considered 'books' that does not come under it. A drama, even though it never sees the stage and as a book has its only public, is not a book but a drama (Class D). A beautifully bound gift volume of Christmas carols is not a book, but music (Class E).

In general, 'books' (Class A) must be published before they can be registered for copyright. They must be 'reproduced in copies for sale' or for general distribution, whether by printing, lithography, typewriting, mimeographing, or any other means of reproduction. They must have a title (although the title is not subject to copyright), a copyright notice, a definite date of publication. Before publication, they are protected by the author's common-law rights; if they are sent to the Copyright Office for registration, they will only be returned.

## BOOKS IN ENGLISH FIRST PUBLISHED IN THE UNITED STATES

*Form A1, deposit 2 copies, fee \$2.*

The primary concern of most American publishers is with 'Books first published in the United States.' If they are 'original' (see page 18) and if their authors are entitled to copyright, books having their first publication here acquire copyright protection as soon as they are published with the proper copyright notice. They must be

\* Wm. B. Woods, in a Master's Report on *Sebring Pottery Co. v. Steubenville Pottery Co.*, et al., 12.11.84.

manufactured according to the provisions of the Copyright Act (see Manufacturing Clause); they must bear on the title page or on the back of the title page the word Copyright, the year, and the name of the copyright proprietor; the author must be a United States citizen or a person living in this country at the time of publication, or a citizen of a country with which the United States has a reciprocal copyright agreement.\*

To register the copyright, it is necessary to send to the Copyright Office (a) application form A1, on the back of which is an affidavit; (b) the registration fee of \$2; (c) two copies of the best edition.

(a) Application form A1 is given on page 202. It calls for:

1. The name of the copyright owner. Here should be given the full legal name of the copyright proprietor, exactly as it is given in the copyright notice. This should be checked against the book itself, for if the notice and the application do not agree, the application will be rejected or sent back for correction.
2. The address of the copyright owner.
3. The name of the author or translator. If the book is anonymous, or is written under a pen name, or is by a married woman under her maiden name, the author's legal name should be given in parentheses. This is not 'required' but is requested. If the book has been done for hire, the proprietor is the author. If it has illustrations, or is a collaboration, both names should be given.
4. The country of which the author or translator is a citizen. If he is an emigré without citizenship, put 'stateless,' but give the name of the country of which he was formerly a citizen. Only the writings of United States citizens or residents, or citizens of countries with which we have copyright agreements, can secure copyright in this country.
5. If the author is an alien domiciled here, give his address. 'Domiciled' means actually residing in this country—not temporarily, as a tourist.
6. The title of the book. The title should be given exactly as it appears on the title page, not as it may otherwise appear on the spine, or the jacket, or the running head.
7. The day, month, and year of first publication. This must agree with the information given in the affidavit on the reverse side of the application. The application must be filed after publication, since publication is one requisite to copyright.
8. The name and address of the person to whom the certificate of registration should be sent.
9. The name and address of the person or firm sending the fee. If the firm has a deposit account at the Copyright Office to which the fee should be charged, be sure that this corresponds with the name under which the account is filed.

\* These countries are listed on page 104.

The affidavit on the reverse of the application should then be filled out and notarized (see Affidavits).

Application Form A1 should be used not only for what are usually considered 'books,' but also for the first publication of the following works:

A poem or song without music, even if it is only on a card or in a leaflet, if it is published separately.

A greeting card, illustrated or not, if it is 'original.'

The printed text to explain how to use a game, a device, plan or system, a deck of cards, et cetera, if it is on a separate sheet or leaflet and has the proper copyright notice.

Advertising catalogues of more than one sheet, four folds. ('It requires very little originality indeed to render proposed advertising material copyrightable.' Weil.)

A published version of a motion-picture scenario, synopsis, or script.

A work of which one or two chapters have appeared in magazines previously, if the copyright on them has been assigned to the author and recorded. Partial pre-publication in abbreviated or digest form does not preclude later registration of the copyright on Form A1.

(b) The registration fee of \$2 must be sent with the application, not with the books for deposit. It should be a check or money order, not currency or stamps.

(c) According to the Copyright Act, the two copies sent for deposit should be forwarded to the Copyright Office immediately on publication. However, since 1943 the Office has asked certain of the larger publishing firms to send their deposit copies as soon as they are available, not hold them until after publication. The Copyright Office will furnish 'Premature Deposit' slips on request. One of these should be placed in each copy, and on it the approximate date of publication should be written. If there are both college and trade editions of the book, or popular and limited editions, to be published simultaneously, the best edition must be sent. It is not necessary to send both editions unless there are major differences in the text or illustrations (i.e. the fact that the cheaper edition omits some of the text or illustrations does not necessitate a duplicate deposit). If a better edition is published later, no second registration or deposit is required if no new material subject to copyright is added.

## THE AMERICAN EDITION OF AN AD INTERIM BOOK

*Form A, deposit 2 copies, fee \$2.*

The American edition of a book previously registered for ad interim copyright (q.v.) is registered on Form A (see page 200). On line (6) of this form must be entered the date of the original foreign edition. If this is not known exactly, it should be estimated as nearly as possible. It is better to antedate the publication than to postdate it, as the former will not invalidate the copyright if challenged.

If because of wartime conditions (in which time requirements have been waived) no ad interim copyright was secured, an American edition of a book in English that was first published abroad may be registered on Form A1, not A. In this case, the place and date of the foreign publication should be entered on the line following line (6), numbering it (6a) (see page 201).

Form A requires an affidavit (q.v.).

## REISSUED Books (see New Editions, et cetera, page 126)

*Form A2 (page 203), deposit 2 copies, fee \$2.*

On this form should be registered new editions or new issues of books that already hold an American copyright or that are in the public domain, providing new copyright material has been added. This new material may be new text matter, new illustrations, introduction, annotation, or index. If the new book is a complete revision or reworking of the former book, it is not a reissue, but a new version (Class A1).

The publisher's most frequent question, how much material is required to justify registration as a reissue, can be answered only indirectly: mere reprints are not enough; typographical, stylistic, and factual corrections are not enough; the addition of minor facts bringing the book up to date is not enough—i.e. death dates, new personnel, the inclusion of new bibliography—rearrangement or regrouping of chapters or volumes is not enough. The new material is significant not so much for its quantity as for its importance. If in filling out the application form the applicant has to search for material to record on the first line—"In the reissued work the copyright is claimed on the new matter as follows:"—he is probably not justified in claiming a new

copyright. If there is any doubt about the validity of the claim for new copyright, the earlier publication date should be included in the notice, lest the whole copyright be lost if the new copyright is challenged in court. This writer recommends the inclusion of the earlier date in any case, although it is not required by law. If the copyright claimant is painstaking in not deceiving the public, the courts are much more likely, as innumerable cases have demonstrated, to protect his rights when he brings suit against an infringer who bases his case on a technical flaw.

If a book includes only one or two chapters that have been published before it should not be registered as a reissued work, but on an A1 form. Any material previously published must of course carry its original copyright notice. If more than half of its content has been published previously as separate stories or articles in magazines or newspapers, it should be registered on A6 (see below).

#### FOREIGN LANGUAGE Books FIRST PUBLISHED ABROAD

*Form A3 (see page 204), deposit 1 copy, fee \$2.*

Only citizens of countries with whom we have reciprocal copyright agreements may claim United States copyright on foreign-language books published outside of this country. Books of which the first edition was published before 1909 with no United States copyright, or before the date of our copyright agreement with the country concerned, may not be copyrighted in a later edition that is really only a colorable reprint, with no new material. Even if the Copyright Office should issue a certificate of registration for such a book, the validity of it could be defeated in court if challenged.

If the foreign edition is not to be offered for sale here, seemingly the copyright notice is not required in all editions. (The courts have not agreed on this question.) Some copies must bear the notice, however, as copyright depends on publication with notice. Registration should be made as soon after publication as possible, although the law allows six months 'on demand' for deposit. There has been no case so far in which late registration has invalidated the copyright of a foreign book.

**AD INTERIM COPYRIGHT (see page 33)**

*Form A4 (see page 205), deposit 1 copy, fee \$2.*

Proprietors of books in English published abroad may secure ad interim copyright (q.v.) by registering them on Form A4. Contributions in English to foreign periodicals, such as poems, short stories, serials, and non-fiction articles, may also secure ad interim registration on this form. In this case, the whole periodical must be deposited, not just the pages on which the material appears. If a book published serially is seeking ad interim protection, the several numbers of the periodical in which it appeared may be registered at once, with a single application and fee.

**CONTRIBUTIONS TO PERIODICALS (see Magazine Articles, et cetera,  
page 116)**

*Form A5 (see page 206), deposit 1 copy of periodical, fee \$2.*

Any newspaper or magazine material bearing a separate copyright notice, if it was previously unpublished, is registered on this form, be it a poem, short story, non-fiction article, child's picture story, cartoon, map, song, play, or chart of election returns (if it has an element of 'originality'). Line (6) of the form lists the general classifications, one of which should be checked: Book, Print, Drama, Map, Music. Any literary work except a play or drama is a 'book.' Any art work (cartoon, sketch, etching, colored or black and white illustration, photograph, line cut, half-tone, photogravure, et cetera) is a 'print.' Advertisements are the only exception: even though published in a periodical, they must be registered as a Commercial Print or Label (KK).

The form of the notice depends on the material: if it is a book, the form must be Copyright, the year, and the name of the owner, and must appear on the first page of the contribution or at the end of it \*; if it is a print or map, it may be © with initials, if the owner's name appears elsewhere. The date of the publication (line 8) is the date on which the issue was placed on sale, not that given on the cover of the magazine.

\* There has been some doubt of the validity of a notice at the end of a contribution, but the question has never arisen in court.

## SERIALS REPUBLISHED IN BOOK FORM

*Form A6, deposit 2 copies, fee \$2.*

Books that were originally published serially, but to which new material has been added, are registered on Form A6, with an affidavit of manufacture (see page 207). The new material in most cases of this sort is hard to designate, as usually it is a matter of general expansion rather than separate chapters or annotation. The best method, especially in fiction, is to estimate what the additional material amounts to, in pages, in filling out line (4), 'the nature of the new matter.' If the serial version consisted of approximately 50,000 words and the book about 75,000, the entry on line (4) may properly be: 'New characterization, narration, and incident equivalent to about 80 pages.' If the serial copyright was held by the magazine, it must be assigned to the new copyright owner before publication. The notice should (but is not legally required to) carry both dates if the serial appeared in an earlier year. The name of the earlier copyright holder need not appear in the notice if the assignment has been recorded.

If the material that previously appeared in a magazine was not really a 'serial' but a series of stories or articles, the book should still be registered on A6 if less than half of the volume is new. This is true even though the stories and articles appeared in various periodicals. In this case line (7) should read ('First published serially in') *various magazines during the year.*

# Classification

THERE ARE 13 classifications, according to the Copyright Act, into which copyrightable material may fall. Each classification has special forms for its applications (see page 43), and time is saved both for the publisher and for the Copyright Office if the proper form is used. As a rule the book or magazine publisher will deal with only two or three classifications at most, but occasionally he will need to concern himself with one of the others. For this reason, a brief discussion is given below about the material included in each. Wrong classification will not jeopardize the copyright, nor are classes always 'water tight.' However, if there is doubt about the proper classification of any material, time will be saved by consulting the Copyright Office before filing the application for registration. The general Classes are:

- (A) Books
- (B) Periodicals, including newspapers
- (C) Lectures
- (D) Dramatic or dramatico-musical compositions
- (E) Music, with or without words
- (F) Maps
- (G) Works of art, models or designs for works of art
- (H) Reproductions of works of art
- (I) Scientific or technical drawings or plastic works
- (J) Photographs
- (K) Prints and pictorial illustrations
- (KK) Commercial prints and labels
- (L) Motion-picture photoplays
- (M) Motion pictures, other than plays
- (R) Renewals
- (RR) Renewals of prints and labels

Classification A, 'Books' (q.v.), includes almost any embodiment of an idea in readable form, with the exception of dramatic works and music. Dictionaries, gazetteers, composite and cyclopedic works and compilations; leaflets, charts, tables, and pamphlets; abridgments, translations, codes, picture books; all of these are books. A collection of lyrics from an opera or operetta in the public domain is a book (but not a complete libretto, with or without music). A collection of

cartoons is a book. A book need not be a bound volume. A single poem on a card is a 'book.' So is a map with a descriptive commentary on the back. A 'book' may be the printed explanation of how to use a slide rule. (But the slide rule itself is not, nor are blank books, check books, record books, devices, or instruments or tools.) In general, a book is the written expression of the author's idea or labor. It need not be original—perhaps it is a collection of other people's writings—or a telephone book. It need not have literary value; it may be a series of cartoons interspersed with wisecracks. One 'book' for which the Copyright Office issued a certificate of registration was a birth certificate embellished with a picture of the hospital, some well-nourished cherubim, and a line of inspiring verse. Strangely enough, a drama, play, or musical comedy published in book form is not a book, but a drama (Class D); a book of songs with their musical score is not a book, but music (Class E); a book of paper dolls is conceivably a print (Class K); but a scenario or script of a motion picture with descriptions of the settings, production, et cetera, published in book form is a book.

A book must be published (see Publication) before it is subject to statutory copyright. In manuscript form it is protected at common law.

(B) Periodicals include newspapers, magazines, reviews, proceedings of societies and serial publications that appear more than once yearly, bulletins—in general, all those periodical publications that are normally accepted as second-class mail. (Serial publications about which there is any doubt—that is, that are not clearly 'periodicals'—should be registered as 'books.') Each issue of a periodical must be registered separately. The title as such is not subject to copyright, but may be entered in the Patent Office as a trade mark. Periodicals cannot be registered before publication. (See Newspapers and Periodicals.)

(C) The classification 'Lectures, sermons, addresses for oral delivery' (q.v.) refers to unpublished manuscripts that are to be read or recited in public. If these are printed and published in book form, they become 'books.' Monologues (as opposed to plays) and some types of radio scripts may also be classified under this heading (see Radio).

(D) Dramatic and dramatico-musical compositions include all types of drama (plays, pantomime, musical comedies, opera, and operettas), with dialogue and action or only action, intended for performance.

Dances, motion pictures, animal shows, and circus tricks are not included (but dance-dramas conceivably are). Mere narration is not drama. The one essential of this class is that there should be some sort of plot or story told through action and usually dialogue. (See Dramas and Music Dramas.)

(E) Musical compositions include both vocal and instrumental works, with or without words, so long as they are not intended to be acted. If *The Mikado* had just been composed and were subject to copyright, it would be Class D: a comic opera. But the sheet of the lyrics and music 'Tit Willow' from *The Mikado*, or a volume of the score would be Class E: musical composition. The acting version of *The Mikado*, words only, would be Class D: drama. The lyrics from *The Mikado*, published separately, would be Class A: a book. Adaptations of music in the public domain are classed under E. (See Music.)

(F) Maps may be either 'of the earth or of the heavens.' So long as they are published separately, without any extensive text or commentary, they should be registered under F. (An elaborate 'key' or text matter places them in Class A.) Unpublished relief maps may be registered under Class I (see below), but other unpublished maps are not subject to statutory copyright. They are protected at common law.

(G) Works of art include paintings, drawings, and sculpture, and may be copyrighted before or after publication (publication in this context means the placing on sale or the public distribution, with the consent of the authorized proprietor). (See Art; Architecture.)

(H) Reproductions—that is the imprints, impressions, or casts—of a work of art may be copyrighted only after they are 'published.' This classification includes engravings, etchings, woodcuts, casts—any reproduction that contains in itself 'an artistic element distinct from that of the original.' The original may be in the public domain or may have its own copyright. In the latter case, the copyright claimant of the reproduction must be able to trace his title to the original artist. (See Art.)

(I) Drawings or plastic works that are scientific or technical may be registered for copyright either before or after publication. Included are diagrams and models, architect's plans, designs for engineering projects, and relief maps. (See Art; Architecture.)

(J) Photographs (q.v.) have been ruled subject to copyright in that they reflect the 'personality' of the photographer. However, the copyright does not prevent anyone else from taking a picture from

the same angle. Half-tones or other photo-engravings are not included under this heading. Photographs appearing in a book or periodical either are protected by the over-all copyright or are a 'contribution' (A5) or a print (K).

(K) Prints and pictorial illustrations include printed pictures, lithographs, and photo-engravings. The classification overlaps G and H, but most pictures belong under K. They need not illustrate the text of a book, but must 'illustrate something.' This class also includes commercial prints and labels (KK) that formerly were registered with the Patent Office. In this connection, a print is any 'artistic work,' with or without accompanying text, used to advertise merchandise. It may be published in a periodical or separately on a sheet or folder. The 'label' is the pictorial or written identification, either stamped on the article itself or attached to it. Any Class K work reproduced by lithography or photo-engraving must be manufactured in the United States unless it represents a scientific or artistic original located abroad. (See Advertisements; Art; Illustrations.)

(L) Motion picture photoplays may or may not be accompanied by sound, and need not be based upon an existing stage play to be included in this class. Comedy 'shorts,' even without plot, often are. (See Motion Pictures.)

(M) Motion pictures other than photoplays include newsreels, travelogues, educational and scientific subjects. (See Motion Pictures.)

## CLASSIFICATION OF TYPICAL COPYRIGHT MATERIAL

Abridgments (A)	Letters (published, A)
Acting versions of old plays (D)	Lithographs (K)
Adaptations (A)	Maps (F; if with much text, A)
Advertisements (A or K)	Models (G or I)
Architectural work and plans (G or I)	Motion pictures (L or M)
Articles for magazines and news- papers (A)	Music (E)
Artistic work (G or I)	New editions (A)
Books (A)	New versions (A)
Busts (G, H)	Newspapers (B)
Cards with text (and illustrations) (A or K)	Oral works (unpublished, C)
Casts of works of art (H)	Periodicals (B)
Catalogues (A or K)	Pictorial illustrations (K)
Charts, 'Tabulated Information' (A)	Photographs (J)
Circulars (A or K)	Photo-engravings (K)
Compilations (A)	Plastic works (I)
Contributions to newspapers and periodicals (A)	Poems (A)
Cyclopedic works (A)	Postal cards (A, J, or K)
Designs for works of art (G)	Posters (K)
Designs for scientific or technical works (I)	Prints and labels (KK)
Diagrams (I)	Prints and pictorial illustrations (K)
Directories (A)	Radio scripts (unpublished, C or D; published, A or D)
Dramatic works (D)	Relief Maps (I)
Drawings (G)	Reprints (A)
Encyclopedias (A)	Sculpture (E)
Engravings (H, K)	Sermons (unpublished, C; pub- lished, A)
Etchings (H)	Songs (with music, E; no music, A)
Explanatory texts (A)	Statues and Statuettes (G, H)
Gazetteers (A)	Tables (A)
Half tones (K)	Technical and scientific drawings (I)
Instruction sheets (A)	Trade catalogues (A or KK)
Lectures (unpublished, C; pub- lished, A)	Verses (A)
	Unpublished works (if not 'books,' C, D, E, G, I, J, K)
	Woodcuts (H)

# Common-Law Rights

COMMON LAW is the unwritten law of the land that receives its force from tradition and universal acceptance. In relation to the author, it springs from the common belief that a writer, artist, or musician has a personal property in his work. After publication—and in some cases before publication—the author can secure his rights by statutory copyright. But from the moment his ideas are placed on paper he may protect his right in them at common law. As the Copyright Act puts it, he is able to 'prevent the copying, publication, or use of [his] unpublished work without his consent, and to obtain damages therefor.'

This is really more extensive protection than that offered by statutory copyright. There is no such thing as 'fair use' of an unpublished work. The quotation of even a few lines of an unpublished manuscript would probably be condemned in court if the author brought suit. The author of an unpublished poem could secure damages if his work were read without his consent over the radio, whereas the author of the published poem under the present law has no redress. Many authors are timid about submitting their manuscripts to publishers, lest they be stolen. It is true that the unscrupulous publisher might steal an idea, but he would be liable under the law if he stole one line of text. Even if he copied 'unconsciously' (i.e. from subconscious memory) he would be guilty of infringement. The only advantages of statutory copyright over common-law protection, if the author can make his choice, are that the former has a registration certificate to be used as evidence in court, if necessary; that any suit for infringement will be tried in the Federal courts, regardless of the citizenship of the author; and that in certain cases the minimum and maximum damages for infringement are fixed.

Common-law rights belong to every resident author, regardless of citizenship. There has been some question whether citizens of countries with whom we have no reciprocal copyright agreement are entitled to copyright protection at common law. The most recent opinions have been that since an author's right in his manuscript is a property right, it belongs to all residents as it does to nationals.

An enumeration of the author's rights at common law is given in the section on the Author. Generally speaking, he may do anything he wants with his manuscript, short of authorizing its publication, without invalidating his common-law right. He owns the physical manuscript; it cannot be seized even by his creditors. He may read it in public, copy it for his friends, license others to translate it or make other versions of it, assign it and/or its rights at common law to another, sell it, broadcast it, set it to music, or what-have-you. He has the right to decide on its first publication. If it should be published without his consent, he could bring action, stop further sale or issuance of copies by injunction, and collect damages. His common-law rights would be unaffected and any copyright that is registered without his authority is invalid.

The author's common-law rights in his work cease under the following conditions:

1. Outright sale of the manuscript with no qualifications or reservations.
2. Authorized publication with notice.
3. Registration for copyright of the unpublished manuscript, if it be a lecture, sermon, address, or radio script, drama, musical composition, or work of art.
4. Dedication to the public (i.e. authorized publication without notice, or unrestricted distribution of copies; see Public Domain).
5. Abandonment—i.e. leaving a manuscript with a publisher for many years without finding out the decision or leaving an address to which it could be returned; allowing a play to be performed many times by various groups of people without registering a protest; failing to protest unauthorized publication of a literary work with no copyright notice; failing to secure United States copyright although copyright in a foreign country has been secured.

It must be stressed again: A book, short story, poem, periodical, contribution to a periodical, newspaper, or contribution to a newspaper, cannot be registered for copyright until it is published. Before that it is protected at common law.

# Compilations (Anthologies)

A COMPILATION, no matter of what its subject matter consists, unless it be music or drama, is a 'book.' The compilation may be of engravings, reproductions of works of art, songs without music, verse, photos, short stories, news articles, radio scripts, prose fiction or non-fiction, aphorisms, familiar quotations—the list is endless. To be sure, the material need not be 'new': it may be taken from works already in the public domain, or from other copyrighted works with the permission of the copyright owner. It is not the actual material that is being registered for copyright, but the personal contribution of the compiler: the arrangement of the material, the editorial equipment, the taste in the final selection. Hence it is that the form—i.e. 'book'—is registered for protection, even though the subject may be pictures with or without text, newspapers, clippings, or cartoons. If any material included is in copyright, it must carry a separate copyright notice. In granting permission for copyright material to be used in compilations publishers customarily ask that the credit line be printed as a footnote on the first page of the quoted material, and that credit be given to author, book, publisher, with mention of the copyright date. For anthologies of poetry or other short selections, however, it is frequently preferable to group the credits together in one page of acknowledgments. Even the publishers who routinely ask for a special form and location seldom object if full credit is given in this way, but some copyright lawyers contend that it endangers the copyright. In any case, the copyright owner may protect himself by stipulating that the notice accompany the selection; if it does not, the omission is not 'by his authority.'

Often the compiler finds that he must make slight changes in the text to achieve a unity for the volume as a whole, or to utilize his space to the best advantage. The substance of the material must never be changed in quotations, and even changes in spelling, punctuation, and capitalization, or minor deletions should have the authorization of the copyright holder. If the author holds the copyright, the compiler must get his permission for changes, not that of the publisher.

Frequently material included in anthologies and other compilations has also appeared in earlier collections. The compiler should always be sure that he has obtained permission for his material from the real copyright owner, if the work is not in the public domain, not the copyright owner of another anthology. In requesting permission he should also ask for Canadian and British rights, if there is any possibility of selling his work abroad, and that it be granted for any other editions of the same material—i.e. a school edition, a de luxe edition, reprint edition, and the like.

Compilations cannot expect to have copyright protection unless they have some element of ‘originality.’ This is recognized in many foreign copyright laws even more explicitly than in our own. Infringers of compilations often seek to justify their action by pointing out the common source of their product and that of the work claimed to be infringed. Certainly if the subject matter is taken from the public domain, a copyright will not prevent another compiler from using the same material and even in substantially the same order, if no special plan or method is apparent. The second compiler must be able to prove, however, that in each case he has gone back to the original source.

The first edition of any compilation should be registered on application form A1. The Copyright Office will probably not examine the deposit copy to decide whether (a) it is really entitled to copyright protection or (b) proper acknowledgment has been made to the copyright holders of copyright material included. These responsibilities are the compiler’s and publisher’s, and the mere acquisition of a certificate of copyright will be of no legal use to him if the volume is not entitled to protection.

# Deposit

Send 2 complete copies  
of the best edition

Works *published* (reproduced in copies for sale) in the United States:  
Books, pamphlets, new editions (A, A1, A2, A6)  
Newspapers and periodicals (B1, B2)  
Plays, music dramas (D1, D3), and music (E, E1)  
Maps (F)  
Works of art (G1), art reproductions (H), and designs (G\*)  
Drawings and plastics (I)  
Photographs (J1)  
Prints or pictorial illustrations (K)  
Commercial prints and labels (KK)  
Motion pictures (L1, M1)

Send 1 complete copy

Contributions to magazines or newspapers, with separate copyright (A5)  
Foreign publications: books in a foreign language (A3) or in English applying for ad interim copyright (A4); dramas (D1 Foreign); music (E Foreign)  
Unpublished works: intended for oral delivery, as lectures, sermons, radio scripts (C); dramas and music dramas (D2 and D4); music (E2, E3); photographs (J2)

Send a photograph or other identifying reproduction

Drawings or plastic works not reproduced in copies for sale (I2); works of art, paintings, drawings, sculpture, or a model or design for architecture (G2)

Send 2 or more prints from different scenes

Unpublished motion pictures (L2, M2)

IN GENERAL, the law requires for deposit at the Copyright Office two copies of domestic published works; one copy of unpublished works and works published abroad but bearing a United States copyright notice; an identifying reproduction of unpublished art

works and motion pictures. Of the published works, the Copyright Act stipulates that the deposit copies must be 'complete' and of the 'best edition.' A proof copy will not do, nor will a 'school edition' if a trade edition or a de luxe edition is published simultaneously. If a de luxe edition is published later, it need not be sent, but if it is released at the same time as the trade edition it must be regarded as 'the best.'

When a contribution to a periodical or newspaper bears a separate copyright notice, the complete copy of the issue in which it appears must be deposited (not just a clipping). This applies also to serial publications, of which a copy of each number must be deposited separately. (But see pages 33 and 116.) If a contribution to a composite work (an article for an encyclopedia or symposium) bears a separate copyright, the pages involved should be sent for deposit. (There is no ruling in the Copyright Act on the mode of deposit of contributions to composite works, but the practice of the Copyright Office is to accept the sheets containing the article, with application form A1.)

Of works not reproduced for sale (unpublished works) the deposit copy must be 'clean, legible, and fastened securely together.' It must also have a title, corresponding to the title given in the application for registration.

Although applications for the copyright registration of works reproduced for sale cannot be filed until after the work is published, the deposit copies of books may be forwarded to the Register of Copyrights as soon as they are available, preferably two or three weeks before publication. For purposes of identification the Copyright Office furnishes 'Premature Deposit' slips. The copyright claimant, after recording on it the approximate date of publication, places one slip in each copy sent for deposit. The copies are then held in the Copyright Office until the application and fee are filed. (This practice was begun in 1943; before that copies were not acceptable until after publication.) The two copies for deposit should be sent in one package, not separately and not at different times.

Deposit copies can be sent through the post office free of charge, but no correspondence, application form, or fee may be included. Publishers may prepare receipt forms to be filled in and signed by the postmaster:

## DEPOSIT

UNITED STATES POST OFFICE

(Place)

(Date) \_\_\_\_\_ 1944

Received from (*name and address of publisher*)One package addressed to The Register of Copyrights, Washington, D. C.,  
said to contain two copies of the following work.

(Author, Title, Publisher)

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Postmaster

per \_\_\_\_\_

Over the postmaster's signature, this receipt serves as evidence of the publisher's intent to deposit copies in accordance with the law. Local post offices will furnish franking labels, free of charge.

All deposit copies and other communications should be addressed to

The Register of Copyrights  
Library of Congress  
Washington, D. C.

If deposits cannot be sent before publication or immediately on publication, they should be sent as soon afterwards as possible. If they are not deposited promptly the copyright is not invalid, as was the case under the former law, but the Register of Copyrights may send the publisher or copyright claimant a request for them. If copies are then not supplied within three months (or six months if they are published outside the limits of the United States) the copyright claimant is liable to a fine of \$100 and twice the retail price of the best edition, and the copyright is lost.

One of the most important cases involving deposit copies is that of Pearson et al. v. The Washingtonian Publishing Co. Inc., in which infringement took place before copies were deposited. The courts first ruled that Drew Pearson, the plaintiff, had no legal basis for suit, since he deposited the copy of his paper that was infringed after he found that it had been copied. It was finally established, however, that failure to deposit promptly is not fatal to the copyright until three months after the Copyright Office has demanded deposit, and that action for infringement can be taken immediately upon deposit, even though the infringement has already taken place.

The two justifications for the requiring of deposits of copyright works are (1) to have the material officially on hand in case of infringement, and (2), more important, to enrich the Library of Con-

gress. Although few other leading countries in the world—especially those who are members of the International Copyright Union—have much sympathy with the idea of making ‘formalities’ such as registration and deposit requisite for copyright, many do follow our custom of building up their official and major university libraries in this way. England requires a total of six copies of important books—for the British Museum, Oxford and Cambridge Libraries, the Universities of London and Edinburgh, and Trinity College, Dublin. The copy for the British Museum is obligatory on publication, the others on demand. Failure to deposit does not invalidate the copyright, but results in a fine.

The Library of Congress decides upon the disposal of books deposited for copyright. Some are placed in its permanent collection; others are put in a reserve collection to be sold or exchanged with other Government libraries.

# Dramas and Music Dramas

*Published dramas, by American authors: form D1, deposit 2 copies, fee \$2.*

*Dramas by foreign authors, published abroad, with notice of American copyright: form D1 (Foreign), deposit 1 copy, fee \$2.*

*Published music dramas: form D3, deposit 2 copies, fee \$2.*

*Unpublished dramas: form D2, deposit 1 copy, fee \$1.*

*Unpublished music dramas: form D4, deposit 1 copy (text and music), fee \$1.*

A DRAMATIC WORK, unlike a 'book,' may be copyrighted in manuscript form (D2) before publication. However, if it is published later, a new registration must be made on D1 (see page 211). In this case, the 28-year copyright term starts with the date of the deposit of the unpublished manuscript. Copies of published dramas should be deposited as soon as they are available.

Published dramas, even though in book form, are not copyrighted as 'books' but as dramas. This means that they do not require affidavit of American manufacture, and also that their performance rights are protected, which is not so in the case of a 'book.' To secure United States copyright, they must carry a copyright notice on the title page or back of it, even if published abroad. The notice even in a foreign-language drama must be in English.

Unpublished dramatic works are protected at common law (q.v.) until publication or until they are registered for copyright. Before publication the author may choose between common-law protection and statutory protection—that is, whether to copyright or not.

Public performance does not constitute publication; only the public distribution or sale of copies does.

Dances, animal shows, sleight-of-hand performances, circus acts, scenery, and moving-picture scripts are not dramas and are not subject to copyright. Motion-picture scenarios (scripts) cannot be registered under Class D. They are protected at common law until they are used as the basis for a motion picture, and then are protected by its copyright. If they are printed and published they may be copyrighted as a 'book.'

The copyright holder of a drama has the exclusive right to novelize

his work or convert it into any other form, such as a series of cartoons, a radio drama, a motion picture. He also has the exclusive right of public performance, whether for profit or not. This includes amateur performances by schools, churches, and clubs, and all forms of radio presentation.

Copyrighted non-dramatic works can be dramatized only by the authority of the copyright holder. This applies to novels, short stories, cartoons, moving pictures, songs, poems, and copyrighted news articles, in so far as the latter represent the original ideas or expression of their authors (see page 129). New acting versions of dramas in the public domain may be copyrighted, but the copyright protects only the new material. A statement of what comprises the new material should appear on the application form.

News as such and all other works in the public domain can be dramatized by anyone, without permission. However, such dramatization, even after it is copyrighted, does not secure to the copyright holder exclusive right to the source material used.

Dramatic copyrights are infringed by substantial copying, either of words or dramatic sequences. Ideas and incidents cannot be copyrighted, nor can stage business.

The use of the same fundamental plot is not infringement, if there is difference in the leading characters, episodes, action, dialogue, and locale.

Titles of dramas cannot be copyrighted, but the holder of a copyrighted drama may protect his title in some instances on the grounds of unfair competition (q.v.). While it is current, he may protect it against use for another drama or a moving picture, even on an unrelated subject.

Dramatic works include all types of 'plays': tragedy, comedy, farce, pantomime, closet drama, pageant, marionettes, extravaganza.

Dramatico-musical works include musical comedies, operas, operettas, dance dramas, and reviews. Both text and music of dramatico-musical works must be deposited. If a musical comedy is copyrighted as a whole, all songs included are also copyrighted. Any songs that have been already published and copyrighted should bear their respective copyright notices, with the year date of first publication, and should not be registered a second time.

# Duration

THE DURATION OF A COPYRIGHT for a published work is 28 years, starting from its first publication date. At the end of that time it can be renewed for 28 years (see Renewals). The 28-year statutory copyright of an unpublished work is understood to begin at the time of its deposit at the Copyright Office. When a work is published serially, the copyright starts with the dates of its serial publication, thus making a series of copyright terms. If it is later published in book form, and new material is added for which a second copyright is secured, the new material is protected for 28 years from the date of publication of the book version. Thus in determining whether or not the copyright of a book is still in effect, it is unsafe to estimate from the first copyright date on the notice, if there is more than one. From the point of view of the copyright claimant, it is also dangerous to take out a second copyright for a work unless the new material is appreciable. The courts are not sympathetic towards attempts to prolong copyright by the registration of a new copyright for every minor change. A reprint with only typographical corrections is not entitled to a new copyright (see New Editions, etc.).

A copyright is presumably invalidated if the year given in the notice is later than the year of publication. Since the beginning of 1944 the Copyright Office has registered works with postdated notices, but it advises the applicant that in the only case that ever came to court (in 1848!) it was declared that the copyright of a postdated book was invalid. The notice should be corrected immediately. If the year in the notice is earlier than the actual publication, the copyright is not voided, as in this case the public benefits. But the term of the copyright starts on the last day of the year recorded in the notice, rather than on the day the work was published.

In most foreign countries copyright endures for the author's life plus 50 years. This is almost invariably longer than the term in the United States, since our renewal term is really a new copyright period and often is lost through the failure of the proper person to make application within the time limit fixed by the law. Thus the illogical situation often occurs that an American book is in the public domain

in the United States, but is technically still under copyright in England and other Union countries. Attempts to revise our law to make it conform to that of the majority of the countries of the International Copyright Union have been defeated on the grounds that the author who has been injudicious in disposing of his property in the first term should have an opportunity to protect himself in the second term. This is more fully discussed under Renewals.

The copyright on a book 'first published' (or simultaneously published) in a foreign country is protected according to the laws of that country. However, unpublished works by American authors that have been copyrighted in the United States are protected in British countries only for the life of their American copyright. If they are 'first published' in Canada or Great Britain, they are protected there for 50 years after the death of the author. The Buenos Aires Convention ruled that the copyright term of any book should in no case be longer in any country than in the country of origin, but that individual members could apply such domestic terms as they desired. Copyright duration in various countries is given in the table on pages 104-5.

The copyright term of a book on which an ad interim copyright was secured before the publication of its American edition starts with its 'first publication,' presumably abroad. The term for a work copyrighted in manuscript and that is later published starts from its first registration rather than its publication date.

The fact that a book goes out of print does not affect the term of its copyright. Even though it sold but a few copies and went out of print within a month of publication, its copyright would continue throughout the full term of 28 years, subject to renewal during the final year. It is never safe to assume that a copyright has lapsed because (a) the book is out of print; (b) no copies are available; (c) the author is no longer living; (d) the publisher is no longer in business; (e) no descendants or heirs of the author can be located; (f) no one answers your letters requesting permission to reprint.

# Fair Use

'FAIR USE' of copyright material has been defined by the courts as that extra-legal use that is usual, reasonable, and customary. In the following cases quotation, either direct or by paraphrasing, is considered legitimate and the permission of the copyright owner is not required.

1. Dramatic and literary criticism: A copyright work, once it is published, is subject to fair criticism, serious or otherwise, and for this purpose it is permissible to quote from it and describe it by words, pictures, or in any other manner.

2. Mimicry, editorial comment, parodies:

I'll never see, where'er I roam,  
A tree as lovely as a pome . . .

does not infringe the copyright of Kilmer's 'Trees'; nor does Betty Smith's

I'd drather say I hated fleas  
Then be like youse what runs down trees

infringe Jan Struther's parody, quoted above. Nor does this quotation, for purposes of illustration, infringe the copyright of *The Saturday Review of Literature*, from the 16 September 1944 issue of which these two parodies are quoted. (However, see Quotations.)

3. Incidental or background use: This has been described by the courts as that casual use of quotation, usually music or verse, to create an atmosphere. McEvoy's use of the lyric 'You Can't Stop Me From Lovin' You' to create an atmosphere in his short story, 'Are You Listening?', published in *Collier's*, was judged by the court to be fair use, and not an infringement. *The New Yorker's* use of the whole chorus (without music) of 'Poor Pauline' in its obituary article on Pearl White was also declared fair use.

4. The use of dictionaries, compilations, law digests, and citations for checking and comparison: Any work of this sort must depend to a certain extent on other books in the field. However, using another's compilation without checking or verifying sources is copy-

ing, a practice often revealed by carrying over the errors of the earlier work into the new.

5. The use of existing scholarly, legal, medical, and scientific works, in the writing of new ones: Here again the serious scholar must take cognizance of the work done by his predecessors and colleagues. Earlier works can be commented on and discussed, and quoted at sufficient length to make the comments intelligible.

6. The use in 'companions' and 'guide books' of synopses of literary, dramatic, musical, or motion-picture works: A case in which a composer sued the author of a book of opera stories for including a synopsis of his work came before the courts. The judge pointed out that a synopsis is not an 'abridgment,' and that the composer's rights were in no way infringed. However, if the synopsis can be used as a substitute for the original, it is 'unfair competition.'

7. A spring-board use: Ladas, in his book on International Copyright, calls this a 'jumping-off use.' It is the use of one work as the inspiration and incentive for a second one. In fiction, Thayer's use of Dumas' *The Three Musketeers* is an example of this; in non-fiction, the carrying on of scholarship by younger scholars.

A question frequently asked to determine whether a quotation from a copyrighted work is 'fair' or not is whether it injures or impairs the value of the original. A dramatization of two characters called Nutt and Jeff was found to infringe the copyright of *Mutt and Jeff*, since if one saw the former he would be less likely to spend money to see the latter. On the other hand, an adverse review of a book of poems in which verses are cited to illustrate the reviewer's criticism is not an infringement, even though it may be injurious to the sale of the book.

Other tests of fair use are:

1. Whether the quotation is a 'material and substantial part' of the original: The length does not matter so much as does its relative importance. Were the 'Ode on a Grecian Urn' still in copyright, and its author alive, Keats might well object to the unauthorized appropriation by someone else of its last two lines.

2. The extent and relative value of the extracts: A quotation of 200 words in a 2000-word article would not be fair use, whereas a similar quotation in a 500-page tome might be fair and incidental—providing credit was given to the author.

3. Whether the quoted portions might be used as a substitute for the original: This was the crux of the Sayers case against Sigmund

Spaeth (see page 146) and conversely was used in McEvoy's defense in the case cited earlier in this article.

4. The nature and purpose for which it is used: A famous statesman's photograph in which the cover of a magazine is seen lying on the table beside him is not an infringement of the copyright of the magazine or of the artist who drew the cover, the court has declared. A statement from Richard DeWolf's book, *An Outline of Copyright Law*, has frequently been quoted ('fair use!') by the courts in regard to cases involving fair use:

It is convenient to distinguish between permissible use of a copyrighted work, which the law does not forbid, and 'fair use' strictly speaking, which is a use technically forbidden by the law, but allowed as reasonable and customary.

Those two words—reasonable and customary—are the criteria of fair use.

# Fees

(See page 148 for permission fees.)

*For the registration of any published work, \$2.*

*For the registration of a commercial print or label, \$6.*

*For the registration of an unpublished work (not reproduced in copies for sale), \$1.*

*Duplicate or additional certificates, \$1.*

*Registration of copyright renewal, \$1. (An exception is for the renewal of copyright of a print or label, for which the fee is \$6.)*

*For recording an assignment or a license, \$2 for every Copyright Office record book page or fraction of over a half-page. (The Copyright Office page size is approximately that of legal-cap paper.)*

*For recording the transfer of ownership of copyright, 10¢ a title, in addition to the fee for recording the assignment.*

*For comparing a copy of an assignment with the official Copyright Office record of it, and certifying it, \$2.*

*For search in the Copyright Office records, indexes, or deposits for information regarding some specific copyright, \$1 an hour.*

EVERY SEPARATE REGISTRATION requires a new fee. If the prints or cartoons in a collection are all copyrighted separately, each must have its own application form and fee.

Fees, unlike deposit copies, cannot be mailed postage free, and must not be enclosed in the deposit copy, or in an envelope attached to it. Time will be saved by sending the necessary fee, as nearly as it can be estimated, with all applications, assignments, or requests for search. The most frequent causes of delay and for further correspondence with the Copyright Office in regard to fees are the failure to make the checks or money orders payable to the Register of Copyrights, and failure to send a sufficient amount to cover the charges. The Copyright Office will accept checks from established publishers, but new publishers or persons unknown to the Copyright Office should send money orders, bank drafts, or certified checks. Fees should be sent by registered mail. Coins, stamps, or currency should never be sent, because of possible loss in the mails, and the fact that there is no way to trace them.

## FEES

Deposit accounts may be placed with the Copyright Office by publishers or agents who have many copyright transactions. These are especially convenient for newspapers and magazine publishers. It is then unnecessary to send a separate fee with each application, and time is saved both for the publisher and for the Copyright Office. Book publishers who register 25 or more books yearly will also find it convenient. The initial deposit may be from \$50 to \$1000. For a newspaper or periodical, the deposit account usually covers one year's fees. When an account runs low, the Office notifies the publisher, so that sufficient balance is always on hand. If at any time the depositor wishes to discontinue the account, the Copyright Office refunds the existing balance.

# Illustrations

ILLUSTRATIONS, CUTS, OR PICTURES in a book are protected by the copyright of the book. Even if the pictures are not attached to the binding, but are in a separate pocket or folder, they are protected by the book's copyright. It is safer, however, in this case, to have each carry a copyright notice of its own—one with the proprietor's initials, at least. If the artist wishes a separate copyright, the illustrations should each carry a separate copyright notice in his name and have a separate registration (K; see page 219). Two complete copies of the book must be deposited for each registration.

Books of pictures, illustrations, cartoons, et cetera, with or without words, are books (Class A).

Illustrated business catalogues are books (A); individual advertising leaflets or cuts in the catalogue are commercial prints (KK).

If the artist's pictures are published in a periodical and copyrighted only as part of the whole, he should stipulate in his contract or letter of sale exactly what rights he grants to the publisher. If the publisher has magazine rights only, or right of use in a specific book, the artist remains the real copyright owner, and the publisher holds the copyright in trust for him. If desirable, the copyright can be assigned back to the artist immediately after publication.

Republished illustrations must carry the copyright notice of the original registration, unless there has been a written assignment, duly recorded.

If the artist wishes to take out his own copyright on pictures published in a newspaper or periodical, he must include a separate copyright notice, and register them on Form A5 (see page 206). He then deposits one complete copy of the issue in which they are published, and sends a deposit fee of \$2.

Ordinarily, a book publisher hires an artist to illustrate a book for a specific fee, and thus buys the material outright. It is usually agreed that in such a case the illustrations are 'done for hire' and the publisher is the copyright owner. If the book is copyrighted in the publisher's name, presumably he then has renewal rights on the illustra-

tions. If the artist wishes to retain his renewal (and other) rights, he should ask that when the application for registration is made his name be entered on line (3) after the author's name, with 'Illustrator' in parenthesis following it. The copyright will then be regarded as taken out in trust for him as co-author, whether the notice is in the name of the author or the publisher.

Lithographs and photo-engravings and illustrations reproduced by lithography or photo-engraving processes must be made in the United States unless they represent works of art or science that are located abroad.

# Importation

DURING THE AMERICAN COPYRIGHT of any work produced in the United States, no copies manufactured elsewhere, even though they be authorized by the copyright owner, can be imported. This applies to books, periodicals, lithographs, and photo-engravings. If, through ignorance or oversight, they are shipped to the United States, they are returned to the country of export. If the shipment is made with intent to circumvent the law, they are destroyed.

There are, however, certain exceptions to the rule and the following classes of books may be imported:

1. Books in a foreign language, of which only the translation is copyrighted here.
2. The original text of a book of foreign origin in a foreign language.
3. Bilingual books, if there is no American edition: a French-English dictionary, for example.
4. Books for the blind, even though in English.
5. Plays, music, and musical dramas, even in book form.
6. Pictures made by any other processes than lithography or photo-engraving processes, or of artistic or scientific subjects located abroad.
7. Books originally printed and bound here, and rebound abroad.
8. Newspapers and periodicals containing authorized reprints of United States copyright material, if they do not contain other United States copyright material reprinted without permission.
9. One copy of a foreign edition, for individual use, not for sale, but not when the work is under copyright here by an American author.
10. Books for the use of the Government or by authority of the Government.
11. Books for the use of educational, philosophical, scientific, or religious societies, but not more than one copy at a time, and not for sale.
12. Books bought *en bloc* as libraries, for use by the institutions listed in paragraph 11, and not for sale.

Once an ad interim copyright has been secured, copies of the foreign edition may no longer be imported into the country. Ordinarily this prohibition lasts for four months, during which the American edition is being manufactured (but see war-time provision on page 35).

Piratical copies are forbidden if they infringe on a United States copyright, but not if there is no United States copyright. Seditious, subversive, and immoral books are also prohibited, but not because of the Copyright Act. Here it is a question of public morals and public welfare.

Books bearing a false copyright notice are also forbidden importation.

No book in English bearing a United States copyright notice may be imported, except as stated above. Hence, if a publisher after copyrighted the American edition of a book prefers to carry the foreign edition instead, he must abandon the copyright. This is done by notifying the Copyright Office and stamping under the notice of all books imported or placed on sale, 'Copyright abandoned,' or words to that effect.

According to an amendment to the Customs Regulations of 1937 (Art. 542½ [sec. 9, 16a] b), the proprietor of books and other printed works may file in the Office of the Director of Customs Exchange, 201 Varick Street, New York City, application in duplicate for recordation of a copyrighted work, together with 1,000 notices for distribution to customs field officers throughout the United States, including Puerto Rico, the Virgin Islands, Hawaii, and Alaska. The notices should be printed in 11-point roman type on white index cards (3 x 5), giving the title and author, the author's citizenship, the date, the registration number, and the name and address of the copyright proprietor. If the work is published abroad under a different title, that title also should be given. In the case of ad interim registration, the words 'ad interim' should be placed before the registration number. When the ad interim copyright is extended to a full term, the new registration number should be sent to the Commissioner of Customs, Washington, D. C., within 30 days.

# Infringement

THE RESTRAINT OF UNLAWFUL USE of copyright material is of course the main object of copyright litigation. By the Copyright Act, the author—or copyright owner—is guaranteed certain definite and exclusive rights. For books, newspapers, periodicals, and all contributions to them (Classes A and B) these are the rights:

1. To print, reprint, publish, copy, and vend.
2. To translate or make other versions.
3. To dramatize.

Classes A and B do not have the rights of public delivery, as do lectures, sermons, and addresses (Class C); or of public performance, or recording, as do dramas (Class D) and music (Class E).

To print is not only to print in type, but also to typewrite or write by any other mechanical means. To publish means to reproduce in copies for sale or public distribution. To copy includes any wholesale rewriting of the material, whether literal copying or not. Slight changes to disguise the source will not lessen the culpability of the infringer. To vend refers to the control by the copyright owner not only of the first sale but also of leases, licenses, and assignments.

'To translate or make other versions' includes translating, abridging, revising, and making versions for other media.

To dramatize includes the reworking of non-dramatic material into dialogue and/or action.

Any of these uses of copyright material without the express permission of the copyright owner constitutes infringement and, if wilful, is punishable by fine, imprisonment, or both. Everyone who takes part in infringement is liable, jointly and severally—the printer, the author, the publisher, the bookseller. Unfortunately, owners of literary copyrights (Classes A and B) have no legal recourse against the unauthorized public performance or delivery of their work, or of unauthorized recordings of it, except through the laws relating to unfair competition (q.v.).

It is not always immediately apparent whether there has been infringement or not. Similarities of plot, character, scene, and even ex-

pression suggest copying, but they may be the result of the use of common source material, such as history, news, or works in the public domain. If A has never read B's book or had it read to him, he cannot have infringed it, since it is impossible to copy something to which you have never had access. However, he may have read it years ago, and copied it unconsciously, from memory. If so, he is still culpable. Such was the case of an infringement by a well-known and well-meaning song writer.

Infringement may sometimes be detected through similarity of expression, from errors in quotations when second-hand sources are used, through similarity of chapter headings and subheadings. Occasionally, even typographical errors are copied by infringers. This was true in a guide book to restaurants and hotels that infringed *Adventures in Good Eating*. The courts have ruled that there may be infringement through the labor-saving use of a rival's gathering of material, even though the results differ.

Ideas are not copyrightable, and similarity of idea is not infringement. Only material that has some claim to originality can be infringed. (Miller, in his *Re-examination of Literary Piracy*, quotes W. R. Inge's quip that originality is nothing but undetected plagiarism.) If a scene or situation has so little novelty that it occurs in many novels or plays, there can be no infringement of it. This was found to be the case in regard to the Irish-Jewish love tribulations of *Abie's Irish Rose*, when Anne Nichols unsuccessfully sued Universal Pictures Corporation, contending that *The Cohens and the Kellys* infringed her play.

Copying without the copyright owner's permission is infringement even when it is in a different medium. A doll copied from a well-known character in a copyrighted child's book was an infringement, even though the doll itself was not copyrightable. A copyrighted painting might be 'copied' by a photograph of it. Wholesale copying is never 'fair use,' whatever its purpose. A telephone book was infringed by a revised version in which the material was rearranged according to the exchanges instead of the subscribers' names.

A person's high professional reputation does not necessarily preclude him from infringing the works of others. Sometimes he does so unconsciously, through quoting from memory; sometimes he doesn't understand the copyright law and thinks that if he acknowledges the source no permission is needed. Scholars of the first rank have been

found to infringe the work of their colleagues, whom they both respect and admire. The cautious publisher will check his authors' works, no matter how high their standing in the academic or professional world.

Infringement is not avoided by altering the plot or adding characters or incidents. A copyrighted map is infringed even though additional boundaries, cities, or colors are included. Non-fiction books are infringed when their citations are used without further checking by a second author, although there is no infringement in using a book for reference, comparison, or checking. Here again the duplication of error is a common way of detecting unfair copying.

When Classified Geographic, Inc., cut up copies of the *National Geographic Magazine*, and, after classifying the articles by topics, sold the resulting compilation in a new binding, it infringed on the original copyright owner's right to 'publish and sell,' even though there was no disguise of the source of the material. When a second-hand book dealer printed the missing parts of old books and inserted them before sale, he infringed the copyright holder's right to print. When a moving-picture company dramatized a novel without permission of the copyright proprietor—in this case, the publisher—even though it had the author's permission, it infringed a former dramatization authorized by the publisher to whom the author had previously granted movie rights.

To win a suit for infringement the copyright owner must prove (1) that his work actually was copied, and (usually) (2) that he has suffered damages. Usually, also, he must prove access. If he brings suit ill-advisedly, simply because another has been successful with material similar to something of his that had little or mediocre success, he may find himself with court costs to pay and little else for his pains. Similarities that may suggest copying to him may be discovered (by the court) to be the result of using a common source. The resemblance must be close enough to be detected by the unprejudiced mind without legal analysis.

Plays and novels on similar subjects or with a common background often use the same atmospheric material. Cases of this type have come before the courts where the subject matter is the gangster, women's reformatories, the personal idiosyncrasies of Alexander Woollcott, and even an unhappy second wife (the case against Du Maurier's *Rebecca*). It is usually found that the similarities are entirely incidental. On the other hand, a fictional biography of Clara Barton was

found to be really infringed by a so-called 'factual' biography that appropriated some of the fictional incidents of the first book. Although one should not be too suspicious of other books on the same subject, it is equally foolish to be too naive and unsuspecting.

Penalties for infringement are clearly defined in the Copyright Act (page 229). Since this is a book of practice, they will not be discussed here. In any case of suspected infringement, a copyright lawyer should be consulted at once.

# International Copyright Relations

IT DOES NOT necessarily follow from the fact that the United States has a reciprocal copyright agreement with another country that all books copyrighted in that country are automatically protected here. For example, a British copyright protects a book in Great Britain and in all the countries of the International Copyright Union, but if the book is in the English language the copyright has no effect in the United States unless there is an American edition too, carrying a United States copyright notice. 'All rights reserved,' 'Copyright reserved,' and other similar statements placed on the copyright page of books of foreign origin may protect South American copyright, but have no significance under United States copyright law. The only effective notice so far as the United States is concerned is the word Copyright, the year date, and the name of the copyright holder.

No book in the English language can hold a United States copyright unless it is completely manufactured in the United States. A foreign work lacking a United States copyright has only two forces working against its possible infringement: first, the moral pressure, the pressure of public opinion, that ostracizes the publisher who steals the unprotected property of others; second, the fact that the United States Copyright Office will not knowingly register a copyright for a piratical edition, and that United States judges refuse to allow a piratical publisher to defend his stolen goods in our courts. In other words, from the strictly legal point of view, if a work is in the public domain, anyone is free to print it; if it is not, it can be defended only by the legal copyright owner.

An American author or publisher who wants to publish, reprint, or quote from a foreign publication that has no copyright here but is protected in its country of origin is morally bound to get permission from the original owner and usually pays at least a 'courtesy' fee for the use accorded him. This is not just nobility on the part of American authors and publishers. In return they expect, and in most cases receive, like treatment from foreign authors and publishers, and

must continue to do so until the United States becomes a member of the International Copyright Union (q.v.).

At the outbreak of the Second World War, the United States had reciprocal copyright agreements with all important countries except the following: \*

Bulgaria	Latvia	Russia
Egypt	Lichtenstein	Turkey
Ethiopia	Lithuania	Venezuela
Jugoslavia	Persia	

Citizens of these countries may secure copyright only if they are residents of the United States at the time of first publication of the work in question. Citizens of other countries may secure copyright by conforming to the requirements of our law: American manufacture of books in English; publication with notice; registration, deposit, and fee. Many foreign books went into the public domain in this country before the enactment of the law of 1909. Their copyright cannot be restored now by the publication of 'new editions'—especially if those editions are really only reprintings, with no additional material of importance.

Since a translation is a 'new work' in the terms of the Copyright Act, a translation into the English language of a foreign book may be copyrighted, even though the original was not. The copyrighted of the authorized translation in this country would not, however, preclude the possibility of another translation, which could also be copyrighted, if the original is in the public domain here.

When an American wants to copyright his work in a foreign country, the situation is a little different. Most of the leading countries of Europe belong to the International Copyright Union, one of the conditions of which is that any work first published or simultaneously published in a country belonging to the Union is protected in all Union countries. There are reasons why simultaneous publication in Canada, though convenient, may not be sound legally. This is discussed in detail on page 101. Hence the safest procedure for an American is to arrange through a British publisher for publication in Great Britain to take place simultaneously with that in the United States.

British publication requires the delivery of one copy of the best edition to the British Museum within one month of publication.

\* The status of our copyright relations with the Netherlands is doubtful. In the *Daddy-Long-Legs* case the Dutch Government declared that our mutual agreement had been cancelled in 1926.

Failure to make deposit does not invalidate the copyright, but it makes the British publisher liable to a fine. Within a year of publication, five other libraries may demand copies; for these the regular trade edition suffices. It is also required that publication be 'actual,' not merely colorable—that is, that books be actually placed on sale and on hand to supply the trade. An unpublished work is automatically protected in Great Britain when it is copyrighted in the United States, since in British countries all works are protected by statutory copyright rather than at common law. However, the term of the protection of unpublished works is governed by the American copyright term, not the usual British term.

British copyright extends for the author's life plus fifty years, and with a few exceptions is assumed to belong to the author, not the proprietor (publisher). In the case of cyclopedic works—or works that in the terms of our law are 'done for hire'—the copyright extends for fifty years from publication. This applies also to anonymous and posthumous works. Since no formalities are required for copyright in Great Britain, and all writings are automatically protected during the author's life and for fifty years after his death, a copyright notice is completely unessential. When an American book is 'first published' in Great Britain it is protected for the author's lifetime plus 50 years. When a British book is published in the United States it is protected for 28 years plus 28 years (see Duration). Hence Americans usually fare better under the British law than they do at home or than British subjects fare here. An American book may be in copyright in Great Britain for years after it is in the public domain here.

Canada, understandably irked by our manufacturing clause, has several provisions not in the Copyright Law of Great Britain. Although she automatically extends copyright protection to all books complying with the copyright law (first publication in the United States), she has added a clause to her law that if a book is not actually produced and published in Canada, any Canadian may apply for a license to reprint it. The American copyright owner is then given two months to produce a Canadian edition; if he does not, the license is granted, with an arrangement for royalties to be paid to the copyright owner. Up to the present time, this clause has never been used, since if Canadian sales justify an edition there, the American publisher is quick to co-operate. Another clause in the Canadian law (not applied but never repealed) is that copies of books in which copyright subsists shall not be imported into Canada until two weeks after

publication. If this were applied it would be impossible for an American book to secure International Copyright through Canada, since publication could not be simultaneous. These two clauses are the basis of the opinion that publication in England rather than Canada is preferable to establish International Copyright.

United States copyrights may be registered in Canada (Ottawa), but registration is not obligatory. However, a certificate of registration is *prima facie* evidence of copyright. The Canadian Government does not supply application blanks; in the Canadian Copyright Law, however, the following form is given:

**APPLICATION FOR REGISTRATION OF COPYRIGHT IN A  
PUBLISHED WORK**

I, .....  
of the city of .....  
in the state of .....

**HEREBY DECLARE**

That I am the owner of the Copyright in the original literary work entitled "....." by ..... of ..... and that the said work was first published by the issue of copies thereof to the public on the ..... day of ..... 19...., in the ..... of ..... and I hereby request you to register the Copyright of the said work in my name in accordance with the provisions of the Copyright Act, 1921.

I herewith forward the fee of \$2.00 for registration of the said Copyright and the further fee of \$1.00 for certificate of such registration.

Dated at ..... the ..... day of ..... 19....  
Signature of applicant .....

To the Commissioner of Patents,  
Copyright Office,  
Ottawa

The 'author, owner, or publisher' of, or 'other person interested in,' the copyright may cause it to be registered; the application may be made in 'the name of the author or of his legal representatives, by any person purporting to be agent of such author or legal representatives.'

In most South American countries, compliance with the copyright law of the country of first publication protects the work in other countries of the Buenos Aires Convention (of which the United States is a signatory) without further formalities: Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, and Uruguay. The terms became binding as each country ratified, so the date of ratification is important in deciding the copyright status of the works of each country. It is

required that to secure copyright every work must carry a notice to the effect that copyright is reserved, in English or any other language. (Our copyright notice is assumed to fulfil this requirement.) There are also various requirements of registration and deposit (see pages 104-5) in the country of first publication. The duration of the copyright protection must not exceed that of the country of origin, but otherwise is governed by the laws of each country.

To quote from DeWolf's book,

It appears that works of American citizens or residents copyrighted under our law automatically obtain protection in the other countries above named which have ratified the convention [Buenos Aires]. No doubt it will be prudent, however, in case copyright is to be claimed in any of these countries, to arrange the matter in advance of publication with an agent acquainted with the local laws and conditions in the country where protection is sought.\*

The only case that has come up in regard to the Buenos Aires Convention had to do with the infringement of a song copyrighted in the Dominican Republic by a New York recording company. It was decided against the plaintiff on the grounds that the Buenos Aires Convention does not apply to recordings, unless there is a separate agreement between the countries concerned. Unfortunately, the question of the failure to include a copyright notice was not discussed.

Citizens of the Philippine Islands may secure United States copyright, but only if their works are manufactured here. The Philippines have their own copyright law, requiring copyright notice and registration, but not domestic manufacture.

Following is a list of the major countries of the world, with an indication of our copyright relations with each. Those followed by an asterisk are members of the International Copyright Union. Those marked 'O.K.' grant to citizens of the United States the same copyright privileges extended to their own citizens upon compliance with the local copyright law, in return for which United States copyright privilege is extended to their nationals upon compliance with all the conditions of the United States Copyright laws. This often means first or simultaneous publication. If there are local copyright conditions for nationals, they are indicated in parentheses.

\* Richard C. DeWolf, *An Outline of Copyright Law*, Boston, 1925.

## INTERNATIONAL COPYRIGHT RELATIONS

	<i>Duration of Copyright</i>	<i>Treaty or Proclamation</i>	<i>Foreign Status of U.S. Copyright Material</i>
Argentina	life + 30	1934	O.K.
Australia *	life + 50	see Great Britain	first or simultaneous publication
Austria *	life + 50	1907, 1910	O.K.
Belgium *	life + 50	1891, 1910	O.K.
Brazil *	life + 60	1915, Buenos Aires	O.K.
Bulgaria *	life + 30	none	only through Int. Copyright Union
Canada *	life + 50	see Great Britain	O.K., but if not printed in Canada may be licensed
Chile	life + 20	1896, 1910	O.K., if registered there (must show registration number)
China	30 years	1904, Treaty	registration, works 'for use and education of the Chinese' or translations protected for 10 years.
Colombia	life + 80	1936, Buenos Aires	O.K. (register within 1 year, deposit 3 copies)
Costa Rica	life + 50	1899, 1908, 1910; 1916, Buenos Aires	O.K. (register within 1 year, deposit 3 copies)
Cuba		1903, 1910	register within 1 year
Czechoslovakia *	life + 50	1927	O.K.
Danzig *	life + 50	1934	O.K.
Denmark *	life + 50	1893, 1910	O.K.
Dominican Republic	life + 30	1912, Buenos Aires	O.K. (register and deposit 2 copies)
Ecuador	life + 50	1914, Buenos Aires	O.K. (register in 6 months, deposit 3 copies)
Egypt		none	no protection
Estonia *	life + 50	none	only through Int. Copyright Union
Ethiopia		none	
Finland *	life + 50	1928	O.K.
France *	life + 50	1891, 1910	O.K.
Germany *	life + 50	1892, 1910	O.K.
Great Britain and possessions *	life + 50	1891, 1910	first or simultaneous publication in British country
Greece *	life + 50	1932	O.K.
Guatemala	perpetual	1908, 1912, Buenos Aires	O.K. (register and deposit 4 copies)
Haiti *	author's life + widow's life + 10-20 years	1919, Buenos Aires	O.K. (deposit 5 copies)
Honduras	10-15-20 years	1908, 1914, Mexico and Buenos Aires	apply for 'patent'
Hungary *	life + 50	1912, Treaty	must comply with formalities

\* Indicates member of International Copyright Union, in which copyright is extended to a book first published in any union country. Proclamations not applicable to literary copyright are not included.

	<i>Duration of Copyright</i>	<i>Treaty or Proclamation</i>	<i>Foreign Status of U.S. Copyright Material</i>
India *	life + 50	see Great Britain	same as Great Britain
Irish Free State *	life + 50	1929	first publication
Italy *	life + 50	1892, 1910	O.K. (deposit 1 copy)
Japan *	life + 30	1906, 1908, Treaty	O.K., if published there, otherwise free translation without permission
Yugoslavia *	life + 50	none	only through Int. Copyright Union
Latvia *		none	only through Int. Copyright Union
Lichtenstein *	life + 30	none	only through Int. Copyright Union
Lithuania		none	no protection
Luxemburg *	life + 50	1910	O.K.
Mexico	30-50 years	1896, 1910	register within 3 years
Monaco *	life + 50		
Morocco *	life + 50		
The Netherlands and possessions *	life + 50	1899, 1910 (cancelled 1926)	first publication
New Zealand *	life + 50	see Great Britain	first or simultaneous publication
Newfoundland		see Great Britain	same as Great Britain
Nicaragua	perpetual	1908; 1913, Buenos Aires	O.K. (register and deposit 6 copies; legal notice on title page)
Norway *	life + 50	1905, 1910	O.K.
Palestine *	life + 50	1933—does not include Trans-Jordan	same as Great Britain
Panama	life + 80	1913, Buenos Aires	O.K.
Paraguay	life	1917, Buenos Aires	O.K. (registration)
Persia		none	no protection
Peru	life + 20	1920, Buenos Aires	O.K. (register and deposit 4 copies)
Philippines	28+28		notice, deposit and registration
Poland *	life + 50	1927	O.K.
Portugal *	life + 50	1893, 1910	O.K.
Rumania *	life + 30	1928	O.K.
Salvador	life + 25	1908, Mexico	deposit
Siam *	life + 30	1921, Treaty	first publication
Spain *	life + 80	1895, 1899, 1910	O.K. (registration)
Sweden *	life + 30	1911	O.K. (first publication)
Switzerland *	life + 30	1891, 1910	O.K.
Tunis *	life + 50	1912	first publication
Turkey *		none	only through Int. Copyright Union
Union of South Africa *		see Great Britain	simultaneous publication within 60 days
Uruguay	life + 25	1919, Buenos Aires	O.K. (registration plus 2 copies)
U.S.S.R.	15 years (?)	none	no protection unless published there
Venezuela	life + 30	none	no protection

\* Indicates member of International Copyright Union, in which copyright is extended to a book first published in any union country. Proclamations not applicable to literary copyright are not included.

# The International Copyright Union

WITH VERY FEW EXCEPTIONS all the leading countries of the world belong to the International Copyright Union. Unhappily, the United States is one exception; others are Russia, China, Turkey, and all of the Latin American countries except Brazil.

There are two basic principles of the Union:

That authors publishing for the first time in any unionist country shall be granted the rights of nationals in all countries of the Union.

That copyright in unionist countries shall not depend on any further formalities, such as deposit, notice, or registration.

The significance of this for the United States is that it is first or simultaneous publication in a unionist country that counts, regardless of the nationality of the author. By publishing in the United States and a unionist country simultaneously, an American author is protected in all countries of the Union. However, the International Copyright Union defines simultaneous publication as publication 'at the same time'—not within two weeks, as does the British Copyright Law. Publication is defined as the issuance of copies to the public.\*

At a time—as during a war—when transportation irregularities make it practically impossible to effect simultaneous publication here and in England, the best solution would seem to be to publish simultaneously in Canada rather than in England. Since Canada is a member of the International Copyright Union, simultaneous publication there would secure copyright in all unionist countries. Since, however, Canada provides that unless a book is actually printed in Canada any Canadian firm may apply for a license to issue a Canadian edition, to be granted unless the original publisher elects to issue one himself within six months; and a second clause forbids the importation of books 'on which copyright subsists' until two weeks after publication, the ultimate copyright status of the book is endangered. Neither clause has ever been invoked but the mere fact of their existence might be grounds for declaring that no bona fide first publication had taken place. Some United States publishers advocate imme-

\* Holland rejects this translation of *éditer* and maintains that publication implies production.

diate publication in Canada and simultaneous publication in England as the best protection.

The real solution, according to the people most concerned with copyright, is for the United States to become a member of the Union. The chief obstacles are our manufacturing clause (q.v.) and that we require foreign authors to comply with our formalities—copyright notice, deposit, and fee. Many people feel that it would be best to relax the manufacturing clause altogether. There is little real benefit to our printers and binders in denying copyright to books not manufactured here. If United States sales do not warrant a separate American edition, the foreign books are imported and sold here without copyright. Solberg, DeWolf, and Ladas, in their several books, have all presented convincing arguments on this subject (see Bibliography). So far, however, every attempt to modify our law has been defeated, chiefly because of union, radio, and music interests.

Even though we retained the manufacturing requirements for our own authors, it would still be to our advantage to waive them for foreigners. The argument that we should then be granting copyright protection to foreigners on easier terms than to our own nationals has little real weight, since by so doing we should give our own authors in return protection practically throughout the world.

In most of the recent cases regarding copyright infringement under the International Copyright Union, Holland has been (from our point of view) the infringing country. Sax Rohmer's story 'The Daughter of Fu Manchu,' was published in *Collier's* and simultaneously put on sale in Canada by a distributor. An unauthorized Dutch translation was vindicated—in the Dutch courts—on the grounds that issuance of copies by a distributing company does not constitute first publication.

In the *Gone with the Wind* case, the novel was published by the Macmillan Company simultaneously in the United States and Canada. Here again a Dutch translation was made without the copyright owner's permission. It was contended that the book was not 'published' in Canada as it was not manufactured there. Before a final decision was reached, Holland was occupied by Germany, so the case still remains unsettled.

*Daddy-Long-Legs* was protected by simultaneous copyright in England and the United States, but a Dutch movie was made of it without permission. This case too remains unsettled because of the war.

The fact that Holland does not respect International Copyright is no indictment of the Union as a whole. By our joining it, American

authors would at least be spared this bogy of what constitutes a foreign 'publication' and what does not.

#### A SUMMARY OF VARIOUS PROVISIONS OF THE BERNE CONVENTION

The International Copyright Union is based on a series of Conventions, of which the revised Convention signed in Rome on 2 June 1928 is the most recent. Although largely similar to the Berne and Paris Conventions, it contained new amendments covering radio, cinema, and other recent media using literature and the arts.

The purpose of the Union, simply, is to protect 'the rights of authors in their literary and artistic work.' The works protected include all those listed in the United States Copyright Act, and in addition choreographic works and pantomime, about which our own Act is not clear. Works of applied art are protected if they are included in the copyright legislation in the country of their origin.

Works published for the first time in any unionist country have the same protection in all unionist countries as do those of nationals, without compliance with further formalities (such as deposit, registration, or copyright notice). However, the work must conform to the law of the unionist country 'of its origin.' For unpublished works, the country of origin means the country of which the author is a citizen; for published works, the country of first publication, or, in the case of simultaneous publication, the country in which the copyright term is shortest. If a work is published simultaneously in a unionist and a non-unionist country, the unionist country is the country of origin.

'Published works' are works that have been 'issued' to the public. In other words, performance, exhibition, or construction (of architecture) does not imply publication.

Authors of non-unionist countries who publish their works for the first time in a Union country enjoy the same rights as authors of unionist countries, so long as the country of citizenship offers adequate copyright protection. However, if a unionist country finds that a non-unionist country does not offer adequate protection, the unionist country may restrict the rights of authors of that country. The unionist country then reports the fact to the Government of the Swiss Confederation (the administrative branch of the Convention), which thereupon advises all other unionist countries. For example, if a hypothetical country, Graustark, allows free-for-all piracy, France can restrict a Graustarkian author from obtaining French copyright, even though his books are first published in Paris; and all other

unionist countries will be advised through the Swiss Confederation.

The Union recognizes the moral rights of an author in his work, and provides that even after assigning his work to another, the author may proclaim his authorship and object to any modification of the work that would injure his honor or his reputation. The legislative means of guaranteeing these moral rights are left to the individual Union countries.

The copyright duration advocated by the Union is the author's life plus 50 years, but if this is not adopted by all unionist countries (and it is not obligatory), the copyright duration of the country of origin is the maximum to be observed. The copyright terms of various countries are indicated in the list on pages 104-5. In a collaboration, the copyright term extends from the death of the last survivor; if the country of origin does not base its copyright term on the author's life, the term shall in no case be less than the lifetime of the last survivor.

Translation rights are guaranteed, as are also reprint rights of novels, stories, poetry, and literary, scientific, or artistic articles originally published in newspapers and periodicals. Current religious, economic, and political articles may be reprinted throughout the Union unless such reprinting is expressly reserved by notice in the newspaper or periodical in which they appear. When they are reprinted, the source must be clearly indicated. Daily news is not restrictable.

Quotations used in literary, scholarly, scientific, or artistic works are regulated by the laws of the countries of origin of the book from which the quotation is taken and the work in which it is quoted.

Musicians and dramatists are granted performing rights, and protected against unauthorized performance or translation of their works. It is not necessary for published dramatic and musical works to carry any notice of the reservation of performance rights. Radio rights and moving-picture rights are also granted, to be regulated by the individual countries. However, in no case can the author's moral rights be ignored nor can he be deprived of remuneration for his work.

The Union expressly directs its protection against the unlawful making of 'other versions,' such as adaptations to a different medium, without authorization, credit, and remuneration.

'Authorship,' until proved untrue, is assumed from the title page. Publishers may protect the rights of anonymous or pseudonymous authors, but otherwise copyright is assumed to belong to the author.

Countries outside the Union that assure these rights may accede to the Union on their request.

# Lectures

SERMONS, RADIO ADDRESSES, ET CETERA

*Unpublished writings intended for oral delivery: Form C (see page 210), deposit 1 copy, fee \$1.*

UNDER THIS GENERAL CLASSIFICATION come monologues and radio scripts (not plays), sermons, even poems if they are intended for public recital and not immediately for publication.

The deposit copy of material in this class should be clean, legible, and securely fastened together. It should have a title, corresponding with that on the application form, for identification purposes. In a series of lectures or radio programs, each performance must be copyrighted separately.

The author of a lecture, or of any other writing intended to be delivered orally, has the exclusive right of public rendition of his work. However, the Copyright Act says that his right is 'public delivery for profit.' Unlike dramatic work, it is not infringed by gratuitous delivery. The author may copyright it or not; if he does not, it will be protected at common law.

The public delivery of a lecture is not publication. It can be published only by 'reproducing it in copies for sale' or distribution—in which case it becomes a 'book.' The lecturer may deliver his work for profit as many times as he likes, and copyright it when he will. His hearers may make notes for their own use, but they cannot sell, publish, or copyright them, nor can they lecture from them for their own profit. A lecture constituting a memory course was held infringed by another lecture using the same combination of ideas and treatment. It is not necessary to prove word-for-word duplication to win a case against an infringer.

If the lecturer does copyright his work, and it is later published in book form, this exclusive right of rendition is lost, and the lecture becomes a book (registered on Form A1). The copyright term runs from the original copyright date of the lecture.

A lecturer may use ideas expressed in other works; his property right rests in the expression and treatment of the ideas.

# Letters

LETTERS ARE SUBJECT to statutory copyright only if published; then they constitute a book (Class A1). Unless and until they are published they belong to the writer and may be protected by him at common law.

Let the publisher beware of publishing any letters not submitted by the author himself without written permission of all persons concerned. The rights of letter writers have for over 200 years been threshed out in court both in England and the United States. Alexander Pope sued the piratical and 'obscene' publisher, Edmund Curll, in 1741, over an edition of his letters that he said Curll was publishing without his permission. Though later biographers have disproved Pope's sincerity in the suit, the principle on which the action was based remains secure. Almost invariably the sympathy and decision of the court favors the author.

Whether the letters are business or personal, of literary merit or dull or trivial, the author—or if he dies, his heir—possesses the exclusive right in them unless he allows them to be published without copyright, in which case, of course, they are dedicated to the public. A telegram is in effect a letter. Sending a message by telegram is not publication and does not put the message into the public domain.

The addressee has a material right in letters he receives. Except in certain circumstances he may preserve them or not, give them away or sell them, will them if he likes, or read them to his friends in private. (The exception is the 'confidential' letter, so noted, in which there is a 'spiritual right' of privacy, either vested in the author, the addressee, or a third person. Love letters and fiduciary letters are in this class.) He cannot read any letters in public, however, without the author's express permission, or read them over the radio. In no case can he publish them for his own profit or benefit without the author's or heir's permission. The author of a letter can ordinarily require the recipient to allow him to make a copy within a reasonable time—if the letter has not been destroyed.

Again, let the publisher—or any businessman—beware of quoting letters for advertising or publicity purposes without permission. A

professor may say in an acknowledging letter that the textbook of which he has just received a sample copy is the best book on the subject he has ever read—but if this is quoted in a circular without his permission, he has grounds for a suit. On the other hand, if a disgruntled author chooses to incorporate in his autobiography letters illustrative of his squabbles with his various publishers, he is liable to a suit. Under common law it is necessary to have the addressee's permission, as well as the author's.

The only exception to the rule of the author's right in his own letters are letters of an agent to an employer, and of men in public office writing in official capacity. Also, any letters may be introduced in court without the owner's permission if it is necessary to prove legal points or vindicate character.

# License

IF AN AUTHOR WISHES to transfer to someone else (his publisher, a creditor, his wife, et cetera) his complete ownership of a copyright, he assigns his title to the copyright and has the assignment recorded in the Copyright Office (see page 51); if he wishes to sell or transfer only a single right, such as that of dramatization or translation, he licenses the right in question, stating in a written document whether the license is exclusive, and whether it is limited either in time or territory. Whereas assignment is the complete transfer of ownership, licensing simply legalizes the doing of certain things that otherwise can be done only by the copyright owner. Licenses may be distributed to many people, exclusively or non-exclusively. Some of the rights to be licensed are: book rights, serial rights (first and second), translation rights, dramatization rights, movie rights, radio rights, reprint rights, territorial rights. Although the Copyright Act makes no provision for the recording of licenses, the Copyright Office will record them in the same way assignments are recorded, and it is generally advisable to have this done.

The copyright owner assigning his copyright, be he the author or someone having otherwise acquired it, does so categorically and irrevocably. The assignee may reassign it or do what he pleases with it. A licensee has only an individual right in the use he has acquired: i.e. a license is not transferable unless so stipulated in the contract.

A licensee cannot sue on his own behalf; any suit for infringement must be made jointly with or individually by the copyright holder. When Nina Wilcox Putnam 'sold and assigned' 'all rights in and of her article 'The Coastal Route to Florida' to the Curtis Publishing Company, she lost all ownership of the story. Although the publisher after publication 'reassigned' in writing to her all rights except American serial rights, actually the second transfer was not an assignment at all, but a license, since an assignment must be for everything or nothing. Hence the author became a mere licensee and could not sue for infringement. (Eliot, et al., v. Geare-Marston, Inc., 10.5.39.)

Most authors agree in their contracts for publication that the copyright shall be taken out in the publisher's name. If, however, the author stipulates that the copyright shall be taken out in his own name, the publisher becomes the licensee of those rights that are granted to him in the contract, and the author retains and controls all other rights. For example, a poet would 'license' the printing of his poem in an anthology or compilation; this grants its use in future editions of that anthology, enlarged or modified, but not elsewhere. An artist may license the use of his drawing in a magazine, by having it carry a separate notice (in this case, ©, with the name of the artist). He would then retain all rights to his work except for magazine publication, unless his agreement included general reprint or other rights. If the magazine is unwilling to have its contributions carry a separate copyright notice, it should be stated in writing that the copyright will be held in trust for the artist, to be assigned back to him on demand. It is well also to have written on the back of the check, before it is indorsed, 'For magazine publication only,' or whatever other terms are agreed upon. Thus although the magazine publisher is the titular owner of the copyright, he is really only a licensee, and at any time the artist may use his picture elsewhere. But unless the copyright is reassigned to him, and the assignment recorded, the picture must carry the magazine copyright notice every time it is used. Since it is implied in every license that neither party shall do anything to injure the other's interest in the results of working the contract, the artist ethically could not later grant rights on the same work to a rival publication, or refuse to allow the first licensee to use it again, for example, in a yearly album.

Foreign copyright is usually transferred by assignment, but it may be by license. In the latter case the foreign publisher is allowed to bring out a limited number of copies of the translation, salable in a given territory, within a specified time, usually for a fixed fee. Understandably, most foreign publishers do not find it worth while to have a translation made on such terms.

If a licensee publishes the work in which he has rights without a copyright notice, the copyright may be lost unless it can be proved that he has acted contrary to the terms of the contract. Thus, if a copyrighted novel *Wind Storm* were dramatized, and the dramatization published without a copyright notice, although the copyright on the novel would remain valid, anyone could use the dramatization as

source material for a movie, a short story, or even another dramatization or another novel.

It is of utmost importance that every license should be explicit:

That it be exclusive or non-exclusive;

That it be limited or unlimited territorially;

That its duration, limited or unlimited, be stated;

That the licensee guarantee to copyright any resultant work in accordance with the terms of the Copyright Act.

# Magazine Articles, Short Stories, Poems

## CONTRIBUTIONS TO PERIODICALS AND NEWSPAPERS

*To register a separate copyright: Form A5 (see page 206), deposit 1 complete copy of the periodical, fee \$2.*

WHEN AN AUTHOR SELLS a story, article, or poem to a magazine or newspaper, his contribution, if it has never before been published, is usually copyrighted as part of the periodical. After publication he may have the copyright assigned to him and recorded in the Copyright Office. With the possible exception of his contribution's being expanded into book form, changing its design and expression fundamentally, any further use made of it must carry the date of the first copyright. In other words, its copyright term originates with its first publication, and to retain its effectiveness must be renewed 28 years after that date.

The magazine can assign to authors (or others) the copyright of the individual contributions without vitiating the copyright of the periodical as a whole. This is the one exception to the 'indivisibility' of copyrights. However, the assignment must be without reservation so far as that contribution is concerned, or the author is only a licensee.

If the author wishes his contribution to be copyrighted in his own name in the first place, he must arrange with his publisher to have a separate copyright line, preferably placed under its title or at the foot of the first page on which it appears: 'Copyright 1945 by John Doe.' He then files an application for registration (Form A5) immediately on publication, depositing as soon as it is available a complete copy of the newspaper or magazine. It is not sufficient to file only the pages on which it appears. The fee is \$2. In the case of a work published serially, each installment must have a separate registration. The only exception made is in the case of a book in English first published serially abroad, and seeking ad interim copyright (q.v.).

On the application Form A5, on line 6 must be checked the 'description' or classification of the contribution: if it is a poem, story, article, or installment of a serial, 'book' should be checked. If it is not a 'book' the Copyright Office will transfer it after registration to its proper class—D5, E5, K5, et cetera—so that rights of performance, for example, will not be lost to dramas and music first published in periodicals, even though they are originally entered on an A form.

If the copyright is not assigned to the author or is not taken out in the author's name, it remains in the name of the publisher-proprietor, and is held in trust for the author, unless the author has originally sold it outright to the publisher, waiving all rights. In that case the proprietor becomes the 'de facto,' not merely titular, assignee of the author, and can do what he likes with the material, licensing it or reassigning it at will. For his protection he should have a written statement from the author expressly assigning what were, before publication, the author's common-law rights. (See Putnam case, page 113.) All subsequent use of the material in other media, unless it is enlarged or modified sufficiently to make it a 'new version,' must include the notice of the original publication.

Even though the publisher is only the trustee of the author, future use of the contribution must carry the copyright in the publisher's name, unless the copyright has subsequently been assigned and the assignment recorded. If it is a serial or a series of stories or poems, any later publisher of the material must have the consent of the original magazine publisher. If the latter holds only magazine or serial rights, he should, if the material is to be republished in book form, assign the copyright either to the author or the book publisher. The book must then carry the copyright date of the earlier publication, but if the assignment is recorded, the name of the new copyright owner or proprietor may be used in the notice. (See also Newspapers and Periodicals.)

# Manufacturing Clause

A NOTABLE DIFFERENCE between United States copyright law and the copyright law of the great majority of other countries is the condition that in order to secure copyright here a book in the English language must be completely manufactured 'within the limits of the United States.' These limits include the Hawaiian Islands and Porto Rico, but not the Philippine Islands.

Foreign-language books published in other countries need not be reprinted here to obtain copyright, but, although the Copyright Act is not explicit on this, it would seem that those by American authors, whether in a foreign language or English, must be manufactured here. Books of foreign origin in the English language may be protected by ad interim copyright (*q.v.*) while their American editions are being produced. Books in raised characters for the use of the blind are exempt from the provision, as are also published plays and music (Classes D and E). Periodicals and newspapers printed in English must conform to the manufacturing requirements, but no affidavit is required. Book illustrations reproduced by lithography or photo-engraving must conform unless they are of scientific or artistic subjects, the originals of which are located in foreign countries.

If the book is printed from type, the type must be set here; if from plates, the plates must be made here from American set type; if it is lithographed, photo-engraved, or reproduced by any similar process, the work must be done here; and the printing and binding, too, must be done in America. During the existence of an American copyright of any particular book, even an authorized edition manufactured elsewhere cannot be imported. The purpose of these requirements was originally to protect the American worker, whose higher standard of living made it impossible to produce books in this country as cheaply as in many foreign states. Unfortunately, however, the provision now works to our disadvantage; it has proved to be the chief obstacle to our joining the International Copyright Union (*q.v.*).

An affidavit certifying that the book has been manufactured in conformance with the terms of the Copyright Act must accompany the application for registration of books in classifications A, A1, A2, A6. Affidavit forms are printed on the reverse of the application forms supplied by the Copyright Office (see *Affidavits*).

# Maps

*Form F (see page 215), deposit 2 copies, fee \$2.*

A MAP CANNOT BE COPYRIGHTED under classification F until it is published. However, a relief map may be classified as a 'scientific or technical drawing' and copyrighted before publication on application form I2 (fee \$1, deposit one copy). Other unpublished maps are protected at common law.

The notice on a map consists of the word Copyright (or Copr.) and the full legal name of the copyright claimant. However, the copyright sign, ©, and the initials or monogram of the claimant may be used if the name of the claimant appears clearly on some accessible part of the map. The year is not necessary.

Detachable maps in book pockets are protected as a 'component part' of the copyrighted book, but it is advisable to have them carry a separate notice.

Copyrighted maps are infringed by copying even though the copy is altered slightly or not all details of the original map are shown.

To be eligible for copyright, a map must have some element of originality or show creative labor. The general outlines of the geographical units of the world are now largely in the public domain. A map taken from a government geological survey cannot be copyrighted even though it is modified to disguise its source.

If a map has a detailed 'key' or legend, or much explanatory material, either on the face or back, it should be copyrighted as a 'book' (A1). This is true especially if its claim to originality lies in its literary rather than its graphic detail.

# Moral Rights

IN MOST CIVIL-LAW COUNTRIES an author's 'moral right' in his literary or artistic work is recognized, and the work is protected against degradation, mutilation, and abuse. However, the author's claim to this right is not mentioned in our Copyright Act. In the few cases in which it has been invoked it has usually been considered expedient to justify it by recourse to state laws or common law involving unfair competition, fraud, or right of privacy. In the International Copyright Union, even after the assignment of copyright, the author has a certain 'moral control' over his work: he may claim authorship, and prevent the deformation or modification of his work in any way that would injure his honor or reputation.

With the widespread adaptation of literary, artistic, and musical works to the radio and movies, such rights may gain increasing recognition here. Theodore Dreiser brought suit in connection with the motion-picture version of *An American Tragedy*, but failed to find support largely because it was proved that he had not taken the opportunity offered him to discuss the scenario and make comment and suggestion.

However, Mrs. Prouty, the author of *Stella Dallas*, won the support of the court when she contended that her rights had been infringed by a radio program that used the title *Stella Dallas* for episodes that served to cheapen her novel. Although the defense contended that there was no 'competition,' the judge declared that the real offense lay in the injury to the author and the deception of the public.

In order to ensure protection of their moral rights, authors should incorporate into all licenses and contracts a clause indicating the extent of changes to be made for condensation (digest), stage, radio, or movie versions, and (if possible) that the final version is to be subject to his approval.

Understandably, moving picture companies are the chief objectors to the inclusion of a 'moral rights' clause in our law—in fact, the clause in the Berne Convention causes them great unhappiness. They contend that when the author sells his work to be used in a new medium,

the purchaser should have a free hand to exploit it. In the circumstances, probably only the most successful and most sought-after authors are able to insist on an effective approval clause.

An author who publishes his work under a *nom de plume*, without copyright, cannot prevent its being republished under his own name, nor can he prevent the *nom de plume*'s being used in connection with it (see page 161).

If an author assigns his title—i.e. transfers all ownership in his work—he has no further recourse whatsoever, except possibly to protect himself against libel.

The question of 'moral rights' also rises in connection with the use of material of foreign origin that does not have copyright protection in this country. Many English works have no American copyright, usually because their probable sale here has not warranted a separate American edition. This is particularly true of specialized and scholarly works that are expensive to produce. Does the fact that there is no American copyright on such books mean that authors and publishers may quote from them at will, gratis, and without asking permission? Certainly the majority of American publishers agree with those of England, that here a moral right is in force that has nothing to do with legal status. Unauthorized quotation is piracy, whether it is punishable under the law or not. Among the better publishers—among the majority of publishers—the convention of 'courtesy fees' has arisen. There can be no legal compulsion for payment of such fees, but neither can there be any question of their justice. Until the time that the United States becomes a member of the International Copyright Union, this 'gentlemen's agreement' is the only protection for both American and foreign authors and publishers against irresponsible and unauthorized reprinting of contemporary material.

# Motion Pictures

*Photoplays published: Form L1, deposit 2 copies and brief description, fee \$2.*

*Photoplays unpublished: Form L2, deposit title, description, and 1 print from each act or scene, fee \$1.*

*Non-fiction movies published: Form M1, deposit 2 copies and brief description, fee \$2.*

*Non-fiction movies unpublished: Form M2, deposit title, description, 2 prints from different parts, fee \$1.*

IF A COPYRIGHTED UNPUBLISHED MOTION PICTURE (L2, or M2) is later published, it must be registered again on the proper Form (L1, or M1) with the proper deposit and fee. The notice on the published picture should be that of the original copyright date of the unpublished film.

The registration of motion pictures applies only to the complete photographic film from which the picture is exhibited. Scenarios—the script or synopsis of a motion picture—are regarded by the Copyright Office as 'books' (q.v.), and hence cannot secure copyright until they are published. (Before publication they are protected by common law rights.) If the scenario is elaborated with complete dialogue, stage directions, and other necessary material for actual production, it may be classified as a 'dramatic composition' (q.v.) and can be copyrighted in manuscript on Form D2.

A single private or 'preview' showing of a motion picture on the screen is not 'publication,' but releasing of films for public commercial showing, on a contractual basis, probably is.

The notice on a film consists of *Copr.* or *Copyright*, the year, and the name of the owner. It should appear under or near the title heading and need appear only once. It protects all the reels that comprise the picture.

Copyright movies are infringed by being shown without permission (usually times and places are specified in a contractual license) even if not for profit. 'Flashing on the screen' has been declared by the courts a kind of 'copying,' so even private exhibition is infringement.

In motion pictures, the use of the title of a contemporary copy-

righted novel is forbidden, even though a title itself cannot be copyrighted. The difference in practice here arises from the fact that the author of the copyrighted book might want to make a dramatization or motion picture of his novel, which would lose its value if another motion picture had already been released under its title. Even movies with closely similar titles are prohibited if they are competitive. The owner of a copyrighted poem, 'The Ballad of Yukon Jake,' who was arranging a motion-picture version of it, was able to collect damages when another movie was produced called *Yukon Jake*, even though the plots were dissimilar. In the case involving *The Gold Diggers of Paris*, the court ruled that the name would have to be changed 'unless they place upon every piece of advertising used in connection with the picture, and upon the motion picture film also, the words, in type as large as "Gold Diggers": "A production of Majestic Pictures Corporation, not based on Avery Hopwood's play or on the motion picture of Warner Bros. Pictures, Inc.," or some equivalent words . . .'

If the title is taken from a work in the public domain, the situation is somewhat different. Here anyone may use the title in any way he pleases, so long as he does not deceive the public.

Authors of novels, plays, comic strips, dramas, songs, poems—and even artists and photographers—are prone to see infringement of their copyright in successful films more than in any other medium. Sometimes they are justified, but more often they read into the motion picture a plot or character they believe to be their own but that really has no relation to their work. Frequently a man who has realized perhaps a few hundred dollars on his opus (if that) is incensed and envious when he sees a movie on a similar theme reaping profits of Hollywood magnitude. Before bringing suit, however, he would do well to get a disinterested legal opinion. Moving-picture producers have good legal advice at every turn, and most of them are not scamps. The suing author or small publisher is liable to find himself paying costs, with only a sense of deflation for his trouble.

This does not mean that many suits against infringing motion pictures have not been decided in court in the author's or publisher's favor, nor that the author should fail to protect his own work by copyright. If there is a flaw in his copyright, and his book is potential 'movie material,' he may be assured that the flaw will be discovered, to his disadvantage. If there is real evidence of infringement, the aggrieved party should by all means bring legal action, and should engage the best copyright lawyer available.

# Music

*Published in the United States: Form E (see pages 213-14), deposit 2 copies, fee \$2.*

*Published abroad with United States copyright: Form E (Foreign), deposit 1 copy, fee \$2.*

*Republished with new copyright material: Form E1, deposit 2 copies, fee \$2.*

*Unpublished: Form E2, deposit 1 copy, fee \$1.*

*Unpublished with new copyright material: Form E3, deposit 1 copy, fee \$1.*

THE COPYRIGHT NOTICE for music must be on the title page or the first page of music. It consists of Copyright, the year of publication (or the earlier year of registration of the unpublished music), and the name of the copyright claimant.

With regard to music, publication means 'reproduced in copies for sale,' not public rendition. Allowing a musical composition to be played in public will not imperil the composer's rights at common law.

To secure copyright under classification E, words, if any, must be actually set to music, not submitted separately or on a separate paper. Words alone are copyrightable only after publication as a 'book' (Form A).

A complete copy of unpublished music must be submitted for deposit with Form E2, but the composer should not send the only copy, as the deposit copy will not be returned. Also, the copy should contain both a title and the author's name.

The copyright term on unpublished music starts with deposit. If the music is later published a new registration and deposit must be made, but the date of the first registration is retained.

In registering new copyright material (E1 or E3) the copyright claimant should be sure to indicate the part or parts for which the new copyright is claimed. The title and the date of the previous registration, if any, must also be given.

Music (Class E) is not required to be manufactured here.

Songs or dances with words and music, published in book form, even though illustrated, are 'music,' not a book. A book of folk dances, a hymnal (with music), a book of college songs are all

Class E. The libretto of an operetta or musical comedy is dramatico-music or drama (Class D), not music. A collection of lyrics from a musical comedy or operetta, or a hymnal with words only, is a book, not music.

The rights granted to the copyright holder for a musical composition are: to print, reprint, publish, copy, and vend; to dramatize; to arrange or adapt to other musical forms; to perform publicly for profit; to license its use on records . . .\*

Adaptations of music in the public domain may be copyrighted if the variations of rhythm, harmony, accent, or tempo are original and of musical workmanship. Minor changes, such as any competent musician might make, do not justify a copyright. Merely setting an alto to an old hymn would not justify a copyright. A Russian composition to which English words were adapted received a copyright, but it applied to the words only. Anyone else was free to use the music.

Arrangements can be copyrighted, such as that of a song or dance for an orchestra, or the arrangement of an old folk song with new words and modern rhythm.

There is probably more altercation about musical infringement than any other subject in copyright law. Fortunately, book publishers and authors rarely need concern themselves about this field. Occasionally, a story will quote a bar or two of music as 'background' or atmosphere. Although the courts have declared this 'fair use,' the book or magazine publisher will avoid the semblance of evil and add to his own feeling of security if he has the copyright owner's permission.

Another field in which the paths of music and book publishers cross is that of books about music or composers, in which music is quoted. The publisher will do well to get permission for any quotation over several bars. He could probably defend his position in court if he failed to do so, by demonstrating that such use was for illustration or criticism, but by securing permission in advance he eliminates even the possibility of having to defend himself.

Be sure of the real ownership, and of the copyright date, of any lyrics included in an anthology. They are not necessarily in the public domain because the music to which they are set is old. Also, assignments of musical copyright are more general than assignments in other categories. If in doubt, have a search made (see page 156).

\* The matter of licensing recordings is very complicated and not important to those chiefly interested in Class A and B material. See Copyright Act, pages 223 and 229-30.

# New Editions, Reprints, and Reissues

*Form A2, deposit 2 copies, fee \$2. Affidavit required.*

To JUSTIFY TAKING OUT a copyright for a new edition, the reissued book must have substantial new material. Slight factual, stylistic, and typographical corrections are not enough, nor is the redistribution of the material by volumes or chapters. On application form A2, the copyright claimant is asked to state what the new copyright matter is. New, rearranged, or improved editorial annotations, new appendices, new illustrations, new introductory matter, even a new or enlarged index will justify a new copyright. In fiction it is the quality and importance of the revision and addition that matters, rather than the amount. A short story or magazine article enlarged into book length with new material and perhaps illustrations may be copyrighted with a new date as a reissued book, but mere 'colorable' additions, designed to prolong the life of the copyright, are not acceptable.

Only the publication date of the new edition is required to appear on the copyright page if a new copyright is obtained, as the Copyright Act regards works republished with new material as 'new works.' It is safer, however, to list the older dates, too, in order to avoid any semblance of 'deceiving the public.' Moreover, if the new material should later be judged by the court to be insufficient to justify a new copyright, notice would have been served that the book was protected by the earlier copyright.

A book of which only several chapters have been published before the publication of the whole volume is not a 'reissue,' but Class A1 (see page 64).

The Copyright Office has no obligation to examine the claim for a new copyright. However, if it appears on its face to be false, the Office can refuse to issue a certificate of registration.

A reprint is a new edition or reissue in which there is no new material added. It can be made only by the authority of the copyright owner. The fact that a book is out of print does not mean that it is

in the public domain. If the original publisher has gone out of business, a search should be made through the Copyright Office to determine if possible the present copyright owner. Even this is not always conclusive, as some copyrights are only registered when threatened with infringement. It should be remembered that publication with notice establishes copyright, whether the copyright is ever registered or not. Unless an assignment of copyright has been made, the reprint must carry the notice of the original edition.

A mere reprint is not registerable for a new copyright, since it has no new copyrightable material. Under the former law, a second registration in the case of a reprint with no new material invalidated the copyright. This is no longer true. If there is a change of title, second registration is not required, but it is to the author's and publisher's advantage to notify the Copyright Office of the new title so that a cross reference can be made in the title file.

It should be remembered that anything originally published as a 'book' (Class A)—a poem, a short story, an instruction sheet, a magazine article, and so on—if brought out in enlarged or modified form, is a 'reissued book.' This applies too to new editions or versions of 'books' in the public domain. The only exception is the book first published serially (see page 68).

# Newspapers and Periodicals

*Form B1 (see page 209), deposit 2 copies, fee \$2.*

*Form B2, deposit 2 copies, charge deposit account, \$2.*

THIS CLASSIFICATION includes magazines, daily and weekly newspapers, reviews, serial publications, journals, bulletins and proceedings of societies and conventions that appear more than once every year, and other material of this type ordinarily registered as 'second-class mail.'

No newspaper or periodical (Class B publication) can be copyrighted until it is published.

Material in this class must be manufactured in the United States, but no affidavit is required. However, if there is any doubt whether the work to be registered is a periodical or a book, it is safer to call it a book and send the affidavit (Form A1). The lack of an affidavit cannot then serve as an argument to justify an infringement.

The publication date is that on which the issue is actually placed on sale, not necessarily that recorded on the front cover (the date of issue). In other words, a monthly is usually placed on sale from three weeks to a month before the date that appears on the issue. The January issue is usually published (placed on sale) in the preceding December. The copyright notice should then be of the old year, not the new.

Separate registration is required for each issue or number of a periodical, and a copyright notice must appear in each issue.

The notice must appear on the title page, the first page of text, or under the title heading, which by general agreement seems to include the mast head.

The title itself cannot be registered for copyright, but protection against similar titles of newspapers and periodicals in direct competition is more often accorded by the courts than in the case of a mere 'book.' The title of a periodical or newspaper may also be a 'trade mark,' registered in the Patent Office. This registration does not protect any of the contents of the periodical.

The copyright on any issue of a newspaper or periodical protects all the separate articles, et cetera, contained in the issue. The copy-

right owner may assign the copyright of any individual article as if he held a separate copyright for it. The publisher may be thought of as holding the separate copyrights for each component part—usually in trust for the various authors and artists, unless he can trace his ownership to outright and unqualified purchase or assignment. For his protection as well as the author's, the terms of publication should be stated in writing, if only on the back of the check.

If any contributions are to be copyrighted separately, they must carry a separate copyright notice. If they appear later in book form, the notice must bear the copyright date of the periodical publication. It must also bear the name of the copyright owner of the periodical unless he has assigned the copyright to the new publisher or the author and the assignment has been registered in the Copyright Office. Book publishers are often careless about having this assignment made before publication. Should the work ever come before the court, however, they stand the chance of losing the whole copyright, since no work can be claimed simultaneously by two different copyright holders, and the Copyright Act specifies that the assignee's name may be used only after the assignment is recorded. It is not the duty of the Register of Copyrights to check up on this, but of the author and the publisher.

Sometimes publishers of periodicals fail to change the year in the copyright notice in the January or February issue. This antedating of the notice does not invalidate the copyright, but will probably shorten the actual term of copyright, the usual practice in such cases being that of dating the copyright term from the last day of the year of the notice rather than from its actual date of publication.

News is not copyrightable as such, since it is 'fact' and therefore belongs to the public. However, if it involves 'authorship' in the way of editorial comment, conjecture, deductions, and descriptions, it is subject to copyright. If a newswriter publishes an account as news, although it is really his own invention, the copyright of the newspaper will not protect it, as the public has been deceived. Copyrighted lectures, dramas, sermons, et cetera (or those protected at common law) may be 'reported' in newspapers without infringement and without being thrown into the public domain. Others may then quote from the parts so reported, but only those parts. If the whole lecture is reprinted, and it is copyrighted, it must be by the authority of the copyright owner and must carry a separate notice.

Newspapers are protected by laws on unfair competition against piracy of their news by immediate competitors. They are not protected against other uses of their news in any way, whether reprinting by other papers, broadcasts by radios, or fictionalizing or dramatizing by individual authors. Editorials, special articles, stories, recipes, cartoons, photographs, et cetera, published in newspapers are all protected by the copyright for the issue, but often carry a separate copyright line.

# Notice

ANY PERSON ENTITLED to do so may secure copyright for his work by publishing it with the notice of copyright required by the Copyright Act. The notice must appear in every copy published or offered for sale in the United States,\* and must be in the English language.

For published literary, musical, or dramatic works, the proper notice is the word Copyright (or Copr.), the year of publication, and the name of the copyright proprietor:

Copyright 1945 by John Doe, Inc.

For various types of art works (Classes F to K), © and the initials, symbol, or monogram of the copyright proprietor will suffice, if his full name appears elsewhere on the work.

Minor variations, such as the inclusion or the omission of the commas before and after the year, or of 'by,' do not affect the validity of the notice. The use of the copyright symbol (©) in Classes A, B, D, or M, does invalidate it, as does any variation of the symbol—c in a triangle or square, for example—in Classes F to K.

In 'books' (q.v.) and published dramas, the notice must appear on the title page or the verso of the title page (the reverse side of it); in newspapers and periodicals, on the title page, or the first page of text of each separate number, or under the title heading (this is commonly interpreted to include the masthead, wherever it appears); in musical works, either on the title page or the first page of music.

Advertising material may appear before the title page, providing the title page itself precedes the first real page of text. If there is no title page, the notice may appear on the front cover. A notice on the back cover is not effective.

One copyright notice in each volume or in each issue of a newspaper or periodical suffices, providing it is properly placed.

The year must be the actual year of publication (q.v.). If a book is published on Christmas Day 1945 and carries a 1946 copyright

\* The law is not clear whether books published abroad in a foreign language, and not offered for sale here, require a notice. One court decision has been in the affirmative, one in the negative.

## NOTICE

notice, the copyright, if challenged, may be declared invalid. A January issue of a periodical published (actually distributed for sale) in December must carry the year of the December distribution. If the year given in the notice antedates actual publication, that is, if it is dated 1945 but not actually published until 1946, the copyright is not invalidated but the copyright period begins on the last day of the year of the notice rather than on the actual publication date. (The copyright is not invalidated because, in this case, the public is the actual gainer.)

A story or poem published and copyrighted in a magazine and later republished in a book collection must carry its first copyright date unless it had substantial new material and a second registration. If a copyright is assigned and recorded, the assignee may substitute his name in the notice. Unless it is recorded, he cannot do so. This applies not only to assignments by publisher to author, and vice versa, but also assignments between publishers, as when one publisher buys out another and takes over all existing copyrights, or when a reprint is brought out by another house after the first edition has gone out of print.

The American edition of a book originally published in England, on which ad interim copyright was secured, must carry the year of its publication abroad. This is not stated explicitly in the Copyright Act, but is the accepted interpretation of § 22.

The name in the notice must be the legal name of the copyright holder. It need not be the full name, if it is of an individual; the surname and initials are enough. A trade name is valid if it is legal in the state in which the work is published. In most states, a person can adopt any name he chooses without legal proceedings. However, if a pen name is used, and used for writing only (i.e. if the author does not have any bank account or business account under that name), some difficulty might conceivably arise. Although most copyright lawyers maintain that it is perfectly legal to use a pen name in the notice, and that nothing in the Copyright Act actually forbids it, the Copyright Office discourages the practice. If one is used, the application form should give both the pen name and the real name: Sylvia Duplaix (Jane Doe).

The name in the notice must be of a living person, if it is of an individual and not a corporation. If it is that of the author, and the author dies before publication, the notice must be corrected or a new page substituted with the name of the new copyright claimant,

as stated in the author's will, if the contract called for copyright in the author's name. The publisher cannot substitute his own name as proprietor unless he can show that an assignment was made by the author before his death.

If a notice is omitted by accident in some copies, the copyright is not invalidated so long as the proprietor has made an effort to comply with the law. If it is omitted in all copies, or is wrongly placed, or incomplete, the copyright is invalid if the book has been published. If only a few copies have been released, the publisher may recall them and have a proper notice inserted. This can be done by a rubber stamp or even pen and ink. If too many copies have been distributed to do this, the copyright is lost. Later publication with proper notice will not remedy the situation. It is of no use to appeal to the Copyright Office in such a case, since the Office is bound by the terms of the law. Even if a certificate of registration is issued, it would be declared invalid if its validity were ever challenged in court.

The Copyright Office is constantly forced to return deposit copies and applications because of the inadequacy of the copyright notice. The most frequent irregularities are:

1. Omission of the notice altogether. (If this is discovered *after* publication, as it usually is, since the affidavit (q.v.) cannot be made before that, and is omitted in all copies, the copyright is lost forever.)
2. Wrong year date of publication. (If the year antedates publication, it will probably be accepted with the understanding that the copyright period starts with the last day of the preceding year; if it postdates publication the copyright is probably lost, if publication has already taken place, though the Copyright Office now issues a certificate and notifies the copyright claimant of the error, advising him to make the correction in all copies still on hand.)
3. Name of copyright owner is omitted. (The word copyright and the date, without the name of the copyright owner, has no legal significance in this country, although it is sometimes used in books of foreign manufacture that do not have a United States copyright.)
4. The notice is misplaced.
5. © is used in a book, drama, musical work, or periodical, rather than Copyright or Copr.
6. The wrong copyright symbol is used. (The symbol is ©, not ℗, or a decorative design modeled on C. Any other symbol such as C in a triangle, C in a square, or just the initial C is invalid.)

## NOTICE

7. The name, initials, monogram, mark, or symbol of the copyright owner is lacking, in works in Classes F to K.

8. The copyright owner's name is not given (Classes A, B, et cetera) but only initials.

9. The date of assignment is given instead of the publication date. On the form letter the Copyright Office incloses with material being returned because of faulty notice appears in ominous bold-face type the following warning:

Where a copy or copies are returned to the applicant due to the absence or inadequacy of the copyright notice required by the Act, and the material has been published (i.e. placed on sale, sold, or publicly distributed) bearing such inadequate notice, registration cannot be made in the Copyright Office.

Few if any European countries require any copyright notice. The purpose of it, in the eyes of the framers of the United States Copyright Act, is to protect the 'innocent infringer.' All States belonging to the Buenos Aires Convention require a 'statement of reservation of property right' in any language. Presumably our copyright notice fulfils this requirement and no further notice need be inserted, but many publishers feel that it is safer to include on a second line, 'All rights reserved.'

# Photographs

*Published: Form J1, deposit 2 copies, fee \$2 with certificate, \$1 without.  
Unpublished: Form J2, deposit 1 copy, fee \$1.*

THE INFORMATION REQUIRED on the J forms is for the most part the same as that required on Forms D and E (see pages 211-18): name and address of copyright owner; country of which the photographer is a citizen; if he is an alien residing here, his address; the title of the photograph (corresponding with the one that appears on it); the name and address of the person to whom the certificate should be sent; and the name and address of the person sending the fee. In addition on Form J1, the day, month, and year of publication is required, and the date of the earlier registration if the photograph was copyrighted before it was published.

Publication here means the distribution of copies of the photograph, for sale or otherwise, not the reproduction of the photograph in a book, newspaper, or magazine. (In the latter case it is protected by the copyright of the work in which it appears, or may be copyrighted separately, either as a 'book,' a 'print,' or a 'contribution.')

For registration purposes, every photograph must have a title, which must appear on the photograph. A number or letter will not do.

Published photographs should bear a copyright notice (q.v.): © with the initials of the copyright owner will suffice if the full name of the owner appears on the back of the photograph. The year need not be given.

If a copyrighted unpublished photograph is later published, a new registration should be made under J1, with the proper deposit and fee. The copyright period begins with the date of the first copyright, and the notice should bear the date of the first registration.

Halftones and other photo-engravings are 'prints' or 'pictorial illustrations' (Class K), not photographs (Class J). But postcards made from photographs are Class J.

The ownership of copyright is somewhat different in the case of photographs from what it is in most copyrightable matter. When a commercial photographer takes a picture of Mrs. Jones, for which she pays him, Mrs. Jones, not the photographer, is entitled to the

copyright unless there is an agreement to the contrary: Mrs. Jones, the subject, is the 'employer,' and the photographer is working for hire. No use of the photograph may be made without Mrs. Jones' consent before it is published; but if she is an actress or public personality and uses it for publicity (i.e. distributes or publishes it without copyright notice) it can be used by anyone who wishes to use it, for purposes other than advertising or trade. State courts have ruled on some occasions that no commercial use may be made of a portrait or picture of a living person without that person's consent.

Photographs not 'made for hire' may be copyrighted by the photographer even though they are of public buildings, statues, or other subjects in the public domain. As recently as 1936 the courts ruled that a photographer who takes a picture of a person \* or object at his own solicitation and expense and for his own benefit is entitled to the copyright. Of course, A's copyright does not prevent B from photographing the same subject, even from the same angle, if he wishes. Actually, the two photographs would differ slightly even if both photographers were experts. The lighting, the focus, the timing all help to individualize the resulting picture.

It is, however, possible to infringe by taking a second photograph of a subject of which the first has been copyrighted, although it is not usual. Such a case is reported in the *Copyright Decisions* of 1909-1914 (Gross et al. v. Seligman et al.): An artist took a photograph of a nude model, and having copyrighted it under the title 'Grace of Youth,' sold it to a distributor, copyright and all. Two years later he photographed the same model in a pose that was identical except for the fact that in the second photograph 'the model wore a smile and held a cherry stem between her teeth, and was called "Cherry Ripe," while in the original she posed with her face in repose, the backgrounds were not identical, and there were some slight changes in the contours of her figure, but otherwise the photographs were the same.'

The court ruled that this was not simply a case of taking two separate photographs of the same person; it was a deliberate attempt to make what, to the ordinary person, would seem to be the same picture. Said the court modestly, 'In this undertaking we think he succeeded.' The second photograph therefore constituted an infringement of the first.

\* Naturally he must have the person's consent before taking the picture; otherwise he invades his 'right of privacy,' to be defended at common law.

## Posthumous Works

THE COPYRIGHT of posthumous works, i.e. works published after the author's death, can be registered in the name of the publisher, as proprietor, if this is in accordance with the contract for publication. If the contract calls for a copyright in the author's name, and the author dies before publication, the copyright notice must be in the name of his estate or of the new owner, his legatee. It cannot be in the name of the deceased author, even though he died on the day before publication. If the copyright notice is already printed with the author's name as proprietor, it should be corrected before publication; otherwise copyright registration will be refused.

Even though the Copyright Office, unaware of the author's death, issued a certificate, if the copyright were ever challenged in court it would be declared invalid.

The unpublished works of a deceased author, if they have never been registered for copyright, are indefinitely protected at common law. Common-law rights cease only on authorized publication, registration, or dedication to the public by the author's legatee.

Works published posthumously and originally copyrighted by the proprietor are renewable by the copyright proprietor, not the author's next of kin or heirs, as are other works (see Renewals).

In British countries posthumous works are protected for fifty years after publication.

# Proprietor

THE COPYRIGHT PROPRIETOR is the person in whose name the copyright is registered. He is the author or the assignee of the author; in the latter case he must trace his title to the author. However, the proprietor may hold only the legal title to the copyright, if the author remains the equitable (real) owner; i.e., he may take out the copyright for the author 'in trust.' This is usually the case when books are copyrighted in the name of the publisher, unless the whole manuscript was bought outright or assigned to him. Unless this is so, the proprietor, for all his 'legal title,' is really only a licensee of the author, and in case of a suit against infringers he must not only trace his title to the author but must have the author join him in the suit.

A proprietor's actual position depends on the terms of the contract. If he has book publishing and/or serial rights only, he is a licensee. If he has magazine rights only, he is a licensee. In every case he has only those rights specifically granted him by contract or agreement. But if the contract is an assignment of all rights, and the proprietor takes out the copyright, he remains the true owner, even though he later transfers all except magazine or serial rights back to the author (see page 113). He may be the real owner as well as the titular proprietor also if he 'hired' the work to be done for him (as a newspaper or magazine has staff writers on salary); he is then the employer-owner. Often members of religious organizations pledge to donate their works to a common order; then the order (or its representative) is the proprietor-owner. It is worth repeating, however, that a proprietor can be a real owner only by tracing his ownership to an assignment (forfeiture of *all* rights; outright sale) from the author, or to ownership of the common-law copyright.

The proprietor may be a person or may be a corporation, partnership, company, or organization. However, the proprietor's name under which the copyright is registered must be a real name, or a business name legal in the state in which the work is published. For example, if John Doe was planning a publishing company with James Ray, and filed a copyright application under the name Doe-Ray Publishing Company, but at the time of registration had not actually formed the

company with Mr. Ray, he would be using a fictitious and therefore, in New York State, an illegal name. Either the Copyright Office would refuse his application or, if it was accepted, he would be liable (a) to a fine for using an illegal notice, and (b) to have his work thrown into the public domain, since the copyright would be invalid.

An actual case similar to the imaginary Doe-Ray case was that of *Haas v. Leo Feist, Inc.* A man named Deutsch employed Haas and Cahalin, two composers, to write 'You Will Never Know How Much I Really Cared,' and copyrighted the work under the fictitious name of 'Haas and Cahalin Music Company.' The copyright was automatically invalid since the 'company' was non-existent. Later, when the song was infringed, Haas, the composer, was unable to win his suit for damages. The court declared: 'When the law required copyright proprietors to affix their names, it certainly intended only such names as they may use under the law of their domicile.'

A proprietor has no better status than the author from whom he derives his title. Hence if the author cannot claim copyright protection under our law (i.e. is a non-resident foreigner from a country having no copyright agreement with the United States, or, perhaps, has already forfeited his common-law right) neither can the proprietor.

Ordinarily, a proprietor cannot renew copyright in his own name, as the renewal must be made in the name of the author. There are, however, certain exceptions to this:

Copyright of cyclopedic and composite works that were originally copyrighted by the proprietor is renewable by the proprietor. This applies even to books written by one person and illustrated by another, when the two are brought together by a publisher-proprietor and when the importance of the illustrations equals that of the text.

Works 'made for hire' are renewed by the proprietor, as are also posthumous works (q.v.); periodicals (excepting contributions bearing separate copyright or for which the copyright has been assigned back to the author); cyclopedic works (with the same exception); and works copyrighted by a corporate body that was not an assignee or licensee of the author.

In regard to renewals, 'the proprietor' has been interpreted as referring to the proprietor owning the copyright in the renewal year, not the original proprietor to whom the copyright was granted, if there have been subsequent assignments.

# Public Domain

ANY PUBLISHED MATERIAL sold in this country that does not have a United States copyright is legally in the public domain. This is true whether publication took place in this country or anywhere else. The easy and obvious way to determine whether United States copyright has been obtained for any book sold in this country is to look for the copyright notice. If there is none, in English and in our prescribed form, there is no copyright. However, the presence of a notice does not mean that everything in the book is protected by copyright. The copyright may apply only to the editorial comment, the annotation, the selection, or the arrangement.

Also in the public domain are works of which the copyright has expired. This includes all books published more than 56 years ago and many published more than 28 years ago, for which no renewal was filed. It also includes any book published either here or in a foreign country before 1909 (the date of present copyright law) that had no United States copyright at that time. If there is any doubt about copyright status, before making any use of any material published with a copyright notice the author or publisher should have a search made by the Copyright Office (see Search).

All United States Government publications are in the public domain, but not necessarily the writings or utterances of all government officials. The works of government officials that are not official publications may be copyrighted. This applies to state publications, also. Material that has previously been copyrighted does not lose its copyright by being included in a government publication, even though it bears no copyright notice. However, if it is *first* published in the government bulletin and carries no notice it becomes a part of the public domain. For example, when after the First World War one publisher brought out an illustrated edition of *General Pershing's Official Report*, which had appeared in the newspapers, he could copyright the illustrations only. Another company brought out the same report with other illustrations. When the first company sued, the court declared, 'What the defendants [the second publisher] did

was to learn by handling the plaintiff's pamphlet that there was a good market for the report, and so they imitated the plaintiff's attractive get-up therefor. This conduct may be called mean, but it is not punishable under the Copyright Act.'

News—the facts of current life and history—belongs to the public and straight reporting cannot be copyrighted. However, when news accounts carry in addition to the facts the author's deductions, descriptions, and comments, they are protected by the copyright of the paper.

Anyone can rework material in the public domain, creating a compilation, abridgment, adaptation, or 'other version,' which if it has sufficient originality may have a copyright of its own. If the changes from the original are immaterial and have not required judgment or skill on the part of the new author or editor, the resultant work will not be subject to copyright. The new work must have at least a 'distinguishable variation.'

A derivative work may be infringed, but to prove infringement it must be shown that the infringing work copied what was original in the earlier derivative work, not just the material that was in the public domain. Cases involving this type of infringement occur most frequently in the field of music, where old songs are adapted to modern taste and, after their popularity is established, are copied by others. In one case a composer copied a Strauss waltz from *Die Fledermaus* and incorporated it in his work with no changes and no acknowledgment. When Romberg later used several bars from the same waltz, and gave credit to Strauss, the first composer sued Romberg for infringement. Naturally, his suit found no legal support.

Often the first edition of a work will go into the public domain long before a later annotated or elaborated edition will. If the borrower is careful to use only the material that was in the first edition he is safe, even though other editions carry much later copyright dates. A later revision or elaboration cannot prolong the copyright on the original material.

Certain material that is technically in the public domain is traditionally and ethically not free for public use without permission of the author or owner and often not without the payment of a 'courtesy fee.' This includes contemporary material published in foreign countries that is still in copyright, but on which no United States copyright exists, especially books in the English language. Often a book is so special in its appeal or so expensive to produce that an American edi-

tion is not feasible. These books are imported bound or in sheets to fill the limited demand. Understandably the publisher who publishes them here feels he has a moral right to reap the profit of his investment; he cannot exact fees for further use himself, but he can refer requests for reprint or quotation permission to the original foreign copyright holder. His only defense against piracy beside the tenuous one of unfair competition is the moral indignation of public opinion. Nevertheless, it is only the occasional 'fly-by-night' piratical publisher who disregards this defense.

# Publication

THE ACTUAL CALENDAR DAY of publication is of the utmost importance in matters of copyright, since the whole term of protection (28 years plus 28 years' renewal term) starts with this day in all cases of published works. The application for renewal (q.v.) must be filed before midnight of the twenty-eighth year.

Books, periodicals, newspapers, maps, prints, and pictorial illustrations cannot be registered for copyright until after publication with the proper notice (q.v.).

The Copyright Office has defined publication as the 'placing on sale, or public distribution of copies or reproductions.' The sale of one copy of an edition of even ten is legitimate publication after registration and deposit. However, the books must be actually 'placed on sale' and available for purchase. A gratuitous gift to the public—for example, giving copies of the manuscript to a public institution where they are publicly circulated—may also be considered publication. Sending out review copies, or placing sample copies on display, however, is not publication; and public performance is not publication.

For further amplification we may say:

*Publication is:*

1. Selling even one single copy to a member of the general public.
2. Releasing films for public showing.
3. Distributing mimeographed, multigraphed, typed, or printed copies to the public, unsolicited or on request.
4. Selling typed, mimeographed, or multigraphed copies to a church, college, or school class or to the general public.
5. Sending out copies on subscription.
6. Giving a copy or copies to the public library (dedication to the public).
7. Being published as a whole, in part, or serially in a newspaper or magazine.

*Publication is not:*

1. Oral presentation in any form.
2. Reading manuscript lectures and allowing students to copy them.

3. Delivering sermons.
4. Submitting a manuscript to a publisher or to a committee.
5. Distributing gratis, typed, mimeographed, or multigraphed copies to a class or limited group (but see 4 above).
6. Sending proof copies for review or samples to the trade.
7. Sending out films for private showings.
8. Distributing 'parts' of a play or music for rehearsal.
9. Reading a poem, short story, monologue, chapter of a book in public, or over the radio.
10. Producing a play or rendering music.

Most countries, including the United States and countries of the International Copyright Union, base copyright protection on 'first publication.' It is therefore advisable for a foreign author publishing his book abroad to have it carry a United States copyright notice on its first appearance. If he publishes it without notice in Italy, for example, and allows copies to be imported for sale in the United States, the book falls automatically into the public domain and can never acquire a valid United States copyright. The only exception is books in the English language first published abroad on which ad interim copyright is secured. But if books in English are imported into the United States, either bound or in 'sheets' and sold here, they are 'published'; even though an American edition is produced later it cannot receive American copyright. This applies even in wartime. (See Ad Interim.)

A work should always carry the date of its first publication in the copyright notice. If a book is first published in Scotland in December 1944, receives ad interim protection, and is subsequently published and copyrighted in the United States in February 1945, its copyright notice should read 1944.

If a publisher announces a book for January 1946, has it printed with a 1946 copyright notice, sends his advance copies to the Copyright Office for deposit with a January 1946 date on the premature deposit slip, but then sells copies in his own sales room before Christmas, or authorizes their sale by book stores before Christmas, he has published his book in December 1945, with a false copyright date, and has possibly lost his copyright irrevocably, should it ever be challenged in court. Even though the Copyright Office is unaware of his Christmas sales and issues him a certificate, should there ever be an

infringement and the case be brought to court, his copyright would probably be declared invalid.

If anyone not authorized to do so sells copies before they are 'officially' published, the copyright proprietor is not responsible and therefore his copyright remains valid.

Publication in a foreign country to secure copyright under the terms of the Berne Convention cannot be merely 'colorable.' Publication is making copies available to the public. Copies must actually be placed on sale, whether there is a demand for them or not.

# Quotations (Permissions)

HOW MUCH CAN BE QUOTED without the specific permission of the copyright owner?

Probably no other question besets publishers—and the Copyright Office—so frequently. In a form letter the Copyright Office says cautiously but not very helpfully, ‘One must use his own best judgment’—which is exactly what the quoting author and publisher want to avoid.

The Copyright Act is silent, the Copyright Office is non-committal, and for the most part the courts have been evasive in defining just what ‘reasonable quotation’ is. However, there are a few facts to be gleaned from court decisions, from general publishing practice, and from the books of copyright authorities, that will serve as guides for safe action:

1. Fair use (q.v.). The courts have conceded that there is a fair use of quotation from copyright works. For material quoted for critical, satirical, discursive, incidental, and scholarly purposes, permission is the exception rather than the rule, and most authors and publishers grant it as free publicity. It stimulates the sale of the work from which it is quoted (unless it is very adverse criticism, and sometimes even then), rather than competes with it. However, the author and publisher of a book making what they deem to be ‘fair use’ of copyright material should be sure that their publication falls into one of the categories listed above. When Sigmund Spaeth defended his use of ‘Ta-Ra-Ra-Boom Der E’ in his book *Read 'em and Weep*, he said that it was for ‘comment and criticism’—certainly fair use. In his preface, however, he recommended the book for the use of the amateur performer, which immediately put it into a field competing with the sheet music of the song.

2. Use in biographies, histories, and other scholarly or scientific works. Most publishers feel that quotations of over 200 words should be used only by permission of the copyright owner, that full credit should be given to author, book, and publisher, but that no fee should be required. (If full credit is given for a quotation of this length, probably no publisher would bring suit or make trouble, even though his permission had not been asked. However, the practice is not

recommended.) No quotation of over 500 words (about a page to a page and a half of text) should ever be used without permission. In some circumstances publishers feel free to ask a fee for quotations of this length, even when they are to appear in scholarly works and are fully acknowledged. Not more than three or four lines of poetry should be used without permission, even in this type of work, and never a full stanza or poem.

3. Use in anthologies, compilations, collections, symposia, digests, reprints, readers. No material should be used in works of this type without giving full credit, carrying copyright notice, and having the written permission of the copyright owner. For the quoting author's and publisher's safety, the fee for use should be fixed before the manuscript goes to the printer.

4. Use in periodicals and newspapers. No material should be used in these as an independent article or even a 'fill-in' without permission and credit, with the fee fixed.

5. Quotations from foreign sources. As is stated elsewhere (page 121), material not formally copyrighted in the United States is technically in the public domain (q.v.). There is an ethical obligation, nevertheless, to ask permission for an extensive profit-making use of material still in copyright in other countries, especially for the purposes listed in paragraphs (3) and (4) above. There is less necessity in the case of those works listed in paragraph (2). If the use is for profit, the foreign publisher will probably ask a 'courtesy' fee.

In regard to books in foreign languages that have never been offered for sale here, it is not always easy to determine whether they hold a United States copyright or not. It is safest to assume that those published in countries with whom we have reciprocal copyright agreements and that were published after the date of the agreement, are protected, especially books from Buenos Aires Convention countries. If there is any doubt, a search should be made through the Copyright Office (see Search), but it must be remembered that many South American books are not registered. If possible the foreign author or publisher, or his representative, should be contacted.

6. 'Limited' use. Any extensive typewritten, multigraphed, or privately printed copy, abridgment, outline, or digest of copyright material for distribution to school, church, club, or similar group should be made only with the consent of the copyright owner. The citation of the source is not enough. The copy does not have to be 'sold' to be an infringement of the original.

7. Radio use. Although 'books' (Class A) are not protected by the Copyright Act against public and oral presentation, most reputable networks refuse to broadcast copyright material without the consent of the copyright owner. If copyright material is used unchanged without permission, however, the owner's only recourse is through state laws relating to unfair competition, not the copyright law; moreover, as many cases have been lost as have been won when legal action has been taken. If the text is changed for radio use, the copyright owner probably has a 'case,' based on his right to dramatize and to make 'other versions' of his work.

8. Illustrations and art work. The copyright on such material depends on where the illustrations originally appeared. Even though no copyright notice is discovered, the work may be protected by an over-all copyright of the magazine, book, or other medium of its first publication. No illustrative material not definitely known to be in the public domain should be used without permission. Even though the subject of the illustration may be in the public domain (a Greek statue, or the Empire State Building), the picture of it—sketch, water-color, drawing, etching, photograph, or the like—may be in copyright. Pictures of living people should never be used without the consent of the subject, although in some states the courts have condoned this.

Usually permission to use an illustration applies only to a specific use. If the material is to be reprinted in any other outlet, a new permission must be secured. Credit lines may be set in very small type, at the lower left of the illustration, close to the edge, but they must appear with the picture every time it is used, and especially in advertising or publicity.

9. Advertising, publicity, or any other commercial use. Not even one line or the author's name should be used without permission.

*Fees:* Many publishers have a definite scale of fees that they ask for quotations, usually based on the number of pages and the author's popularity. However, some publishers are avaricious and some authors dislike to be quoted. If the fee for a quotation seems unreasonable, the best thing to do is to find a substitute for the material, if possible, or avoid direct quotation by discussion and comment. All permissions should be cleared and the fees definitely fixed before the manuscript goes into work. The penalty for going ahead without this precaution is being forced to pay whatever fee is demanded, reasonable or not.

In securing permission to use copyrighted works, it is important to be sure that the person granting the permission is really the copyright owner. In the Sayers case against Sigmund Spaeth, referred to above, Spaeth had received permission from the original publisher of the song he quoted, and gave credit in his book to the author. However, the first term of the copyright had expired, and Sayers, the author, had renewed it in his own name. The publisher therefore had no longer any rights in it. In the *Firebird* case, the publisher gave a motion-picture company permission to use excerpts from the music in a sound film, but Stravinsky himself was not consulted and he claimed that his 'moral rights,' defensible under French law, were infringed.

It is important to have the contract state, in the case of any extended reprint or quotation, what specific rights are given: periodical publication, trade and text book, any other edition, et cetera. It should also be stated what territorial rights are included: British, Canadian, South American, et cetera.

It is the author's responsibility to clear permissions unless the publisher voluntarily undertakes to do so.

# Radio

SINCE RADIO was naturally unforeseen by the framers of the copyright law, no definite 'class' is reserved for radio scripts. Seemingly, unpublished scripts that are non-dramatic are best classified under Class C (Form C, deposit 1 copy, fee \$1). Unpublished radio plays or musical plays should be registered as 'drama' (Form D2, deposit 1 copy, fee \$1). Published scripts may be registered either as a 'book' or a drama, depending on their nature (Forms A1 and D1 respectively, deposit 2 copies, fee \$2).

Every program, episode, or script requires a separate registration. A series of scripts (unpublished) making a complete radio sequence cannot be registered as a unit. The title of a broadcast cannot be copyrighted (see Titles).

A radio script ordinarily belongs to the author, unless it is assigned to the sponsor or advertiser by the terms of the contract. If he retains ownership, the author may publish it or use it in any way he wishes, so long as he does not injure the sponsor's purpose.

Radio broadcasting is not publication. Most radio writers prefer, therefore, to protect their scripts under common law, rather than by statutory copyright. This prolongs the life of their interest; if they decide to publish them at any time (as a 'book'), their copyright term starts from that date.

Radio's chief troubles are with music, as the copyright law grants to copyright owners of music all rights of public performance for profit, and of recordings. As this complicated field is outside the range of all but a very few book publishers it will not be discussed here. The best counsel to music publishers—which they seldom need—is to consult a copyright lawyer about any question of radio infringement.

However, one of the knottiest problems for the author and publisher of books, poems, stories, and articles—anything included in Classes A and B—is that of radio performance rights. In 1909, the date of the present copyright law, there was no 'radio.' The Copyright Act granted to music composers and authors of lectures, addresses,

sermons, and other material for 'oral delivery' the exclusive right to deliver their material in public for profit. Thus material in Classes C and E, lectures and music, are protected against unauthorized use on the radio, if the program is commercial. To authors of dramas and dramatico-musical material (Class D) was given exclusive right of public performance, whether for profit or not. This means that even gratuitous amateur programs using copyright material of this class must have the permission of the copyright owner, and that works in Class D are protected against being broadcast without authorization on either commercial or city service (unsponsored) programs. To authors of 'books,' however, the exclusive right to dramatize was given, but public performance was not mentioned. Radio-performance rights on books, so far as the Copyright Act is concerned, are non-existent.

The fatal decision for the book publisher and author was made in the case of *Kreymborg v. Durante* in 1934. Jimmy Durante had recited three original poems of Alfred Kreymborg over the air. Kreymborg brought suit. The court decided that Class A material, since it was not a production 'similar' to a lecture, sermon, or address (Class C material), was unprotected against unauthorized public performance and delivery—'in other words [it] may be recited in public without infringement.' In view of this decision, the only legal means of providing protection for the author is by amendment to the Copyright Act. There was such a clause in the Duffy Bill, a proposal to amend the Copyright Act that was before Congress in one form or another until 1937. It had the double advantage of assuring both radio and mechanical-record rights; granting to the copyright holder the exclusive right 'to communicate the copyrighted work to the public by radio broadcasting, radio facsimile, wired radio, telephone, television, or other means of transmission.' But unfortunately the Duffy Bill and all other efforts to amend the law have so far been unsuccessful.

Until it is amended, what can the author and publisher do to protect their work?

First, they can stand on the ground that the Copyright Act does grant dramatization rights. One type of broadcast is technically a dramatization, even though the author's words remain unchanged. When the material is read by several persons, each interpreting a different character or group of characters, with a narrator reading the intervening text, it is an infringement of the copyrighted work even in the terms of the present law. Even if several persons divide the

reading of the material between them, but there is no assignment of character roles, they approach dramatization. In these cases, the author and publisher should insist that the permission of the copyright owner is required, and a fee should be requested.

A second possibility is the recasting of copyrighted work into a radio script. If the words are changed, if it is adapted or abridged for the radio, or 'pointed up' for radio reading, it is 'another version,' the right of making which is expressly reserved to the author of literary works under Section 1, clause b. Here again the copyright owner's permission is required, and the terms of an agreement should state whether the resulting script belongs to the station or reverts to the copyright owner. If it is an extensive adaptation of material, it may become a 'new work,' copyrightable by the authorized script writer, if he wishes, under the statute, or to be protected at common law.

There is, however, a third use of copyright material, in which the author's words are unchanged in any way and are read only by one person. Against unauthorized use there are only moral or ethical rights, supported not by law but by public opinion. Happily, the management of most major networks is honest. Top-ranking sponsors will not use copyrighted material without permission. Even though the broadcast may be considered 'good publicity,' the copyright owner in granting permission should ask for 'credit' in the announcement, and also for a fee—a nominal or 'courtesy' fee, if he prefers to regard it as such. The publishers' attitude should be that the author is entitled to this as a token of his ownership. There is no more legal basis for it than there is for paying foreign authors and publishers for material that has no United States copyright, but if publishers will act fairly, and be neither greedy nor unreasonable, the same tradition can be called upon to support them until the law is amended.

Finally, against unscrupulous broadcasters that steal copyrighted material without permission, credit, or fee, adapting it to their own purposes, the copyright owner usually has recourse to state laws against unfair competition (q.v.). There have not been many test cases in this field, but seemingly in most states the publisher and author have firm ground on which to stand. As in the case of any other suspected infringement, the best procedure is to consult a first-class copyright lawyer at once.

# Renewals

*Form R (RR) (see page 222), no deposit, fee \$1 (\$6).*

THE APPLICATION FOR RENEWAL of a copyright must be made within the last 12 months of the original term. If a work was first copyrighted 28 February 1920, the application must be in the Copyright Office before midnight 27 February 1948—not just be in the mails. If this is not done, the copyright is irrevocably lost. Many people misunderstand the wording of the law and believe that copyright renewal may be made any time within the named year, i.e. any time before 31 December 1948. This is definitely wrong. Also, a renewal application submitted 27 February 1947 would be invalid; the renewal privilege is not open until the beginning of the last year of the original term.

A copyright renewal is a new grant, not an extension of the original term. The law specifies explicitly who may apply for copyright renewal:

1. the author
2. the widow (widower) or children, if the author is dead (if there are several children, they will be tenants in common)
3. the author's executor, if none of class two is living
4. if none of class two is living, and the author died intestate, the author's next of kin
5. the proprietor only in the cases listed below:
  - a. if the work is posthumous
  - b. if the work is a periodical
  - c. if it is a cyclopedic or composite work and, in a, b and c, the original copyright was taken out by the proprietor
  - d. if the original copyright was held by a corporate body other than assignee or licensee of the author
  - e. if the original work was done for hire, and the employer was the original proprietor

The Copyright Office issues renewal application forms (see page 222) on which must be recorded the exact status (in terms of one of the classes listed above) of the person making the renewal. The fee for recording a renewal is \$1. (For a commercial print or label the renewal form is RR, and the fee is \$6.)

The claimant's full name should be given in the application, not just 'J. Doe' or 'Mrs. John Doe,' but (Mrs.) Jane L. Doe. Also the status of the renewal claimant must be stated, as the Copyright Office can accept renewals only by those legally qualified to apply. The complete title of the book should be given as it was on the original registration, and any later change of title should also be indicated. No deposit copy is required.

In the case of work originally done for hire, such as writing produced by employees on a weekly salary, if the employer who originally copyrighted the work assigns his copyright, the new proprietor, not the original employer or his heirs, should make application for renewal. In other words, in the case of (5e) above, the present proprietor makes the renewal, not the original employer or proprietor.

A translation must be renewed in the name of the translator, not in that of the author of the original work. (But if the translation was of an unpublished manuscript, and done 'for hire,' the 'proprietor' may renew, even if he was the original author.)

In the case of co-authors, a renewal made by one is sufficient, if the original copyright was in the name of either. This applies to composer and lyricist, in music, and to author and illustrator, as well as to collaborating writers.

If a dead author's affairs are still in the hands of his executor, the executor should make the application if there is no widow(er) or children, not the heirs or next of kin.

If a book is written by one person and illustrated by another, and the book was originally copyrighted by the author, the author's renewal will be considered to renew the artist's work, as a trustee. If the book was originally copyrighted by someone other than the author, and the author is now dead, the renewal made by his widow, heirs, or executor, et cetera, will not cover the illustrations. The illustrator or proprietor will have to renew, depending on the facts of the case (true ownership).

The renewal of the copyright on a periodical by the proprietor will not cover any individual copyrights that were assigned back to the authors, or on which separate copyrights were obtained. In each of these cases the author is responsible for the renewal.

If a renewal form is made out incorrectly, even though all the facts are given, the Copyright Office cannot make the correction. It will return the form to the sender, with necessary information, and a new application must be filed. It is therefore imperative to submit the re-

newal application in plenty of time to allow for the correction of possible errors.

An author's assignee cannot make a renewal, but an author or his widow(er) may, during the renewal year, assign the renewed copyright, so that the proprietor may be able to register it in his own name. An author may also contract to assign the renewal after it is made, or to make it for the benefit of someone else. Copies issued after the renewal has been made should probably carry both the original date and the renewal date, although the law is not clear about this. It is suggested that the notice read, 'Copyright 1919 by Dash Publishing Company; renewed 1946 by John Doe.' However, if the new copyright is assigned to the publisher after renewal, and the assignment is recorded, the notice may read 'Copyright 1918 by Dash Publishing Company; renewed 1946.'

The theory behind the renewal clause is that if the author made a bad bargain in his first copyright, he may have a chance to reap some benefit from the second term. Actually it is difficult to demonstrate just how our system is an improvement over that of England, for example, where the term runs during the lifetime of the author and fifty years thereafter. In that system, although the author does not have the opportunity to remedy an earlier error, he is protected against losing his copyright through carelessness or oversight in making the renewal. Moreover, if a United States author contracts to assign his renewed copyright when he acquires it, he is in a little better position than he was originally.

When the renewal year comes, the proprietor, publisher, or anyone interested, if he cannot get in touch with the author or his heirs, may file an application in the name of the person to whom he thinks the claim belongs, even if he is not certain of that person's address or even of his existence. The Copyright Office will probably renew through the name of any beneficiary eligible under the Copyright Act. If there are two applications, at least the work is saved from going into the public domain, and the rival contestants can settle the matter between themselves.

# Search

BEFORE ANY MATERIAL from a published book or periodical is used, in whole or in part, its copyright status should be determined. In the case of material from a book offered for sale in the United States, the simplest way to discover whether it is in copyright is to look for the notice. If there is no notice, there is no copyright. If no copy of the original work is available (and it is always the original book that tells the tale, not a reprint, anthology, or collection) the *Catalogue of Copyright Entries*, published by the Copyright Office, should be consulted.

If there is still doubt about the copyright of any material to be quoted, reprinted, abridged, translated, dramatized, or used in any other way specifically restricted by the Copyright Act, it is advisable to have a search made at the Copyright Office. In the Library of Congress Annex, in which the Copyright Office is located, is what appears to be an entire city block of card catalogues. Several systems have been used since the first index was started; the early cards are written in ink by hand, with flourishes of penmanship. Besides a complete index of copyright claimants, there are title indexes for dramas and music, dating from 1870, later for motion pictures, and for all other classifications from 1938 on. In addition, there is an author index for books. Copyright assignments are also recorded, and occasionally licenses.

When a search is requested, all available facts should be furnished: the title, the author, the copyright claimant, the year date, and what the work is: book, drama, music, art, and so forth. If it was first published in a magazine or periodical, full details about that should be stated when known or ascertainable. It should also be stated if there may have been a change of title. If a search is to be made for an assignment of copyright, the name of the assignor, assignee, or both should be given, as also should be the copyright number if it is known.

The fee for a copyright search is \$1 an hour, and the usual search takes about an hour or two at the most. Time will be saved by enclosing a money order for \$1 or \$2, according to the time it is estimated

the search will require. If more time is needed, the Copyright Office will stop at the end of the time for which it has the money on hand and advise the customer. Time is lost, therefore, by not sending a sufficient amount.

The fact that the Copyright Office has been unable to discover a copyright record for a particular work is not conclusive evidence that no United States copyright for it exists, especially in the case of a foreign work or of material that appeared first in a newspaper or periodical. Nevertheless, the fact that the author or publisher has attempted through a search to discover the copyright status of material he wished to use is at least evidence of his good faith in case he has unwittingly infringed.

# Titles

TITLES CANNOT BE COPYRIGHTED. It is true that any work to be registered in the Copyright Office must have a title, but the recording of the title is for purposes of identification of the work, not to register the right of exclusive use to the copyright claimant. One need only look through a volume of the *United States Catalogue* to see that title duplication is the rule rather than the exception. The courts have ruled that the author of a copyrighted novel is not entitled to the protection of its title, especially if it is used by someone else for a drama, poem, or some other form of writing in which none of the material imitates or duplicates that of the book. That there is not more duplication of titles is the result of the very natural wariness of authors and publishers against having the public confuse a new work with one already on the market.

It is only the opportunist, the charlatan, who tries to foist his work on the public as something that it isn't, through deliberate duplication or close similarity of title with a contemporary success or best seller. Against such people there is protection, not through copyright law, but through state laws against unfair competition and fraud. Injunctions against duplication of this sort have been issued most frequently when they relate to newspapers and magazines, plays and moving pictures, rather than to stories, poems, or novels. When the author of the 'Frank Merriwell' comic strips and novels found while his moving-picture version of the material was in production that a rival company was also planning a movie called *Frank Merriwell*, he had the production stopped by court injunction. The judge declared that a title that has become closely identified in the public mind with the work of a particular author may not during the life of the copyright be used to mislead. Even after the copyright of the original material lapses anyone using the title would have to explain that the material was not that of the original author.

The cases in which author and publisher may look for court protection of a title may be summarized as follows:

- (a) A novel entitled *Elephant's Eye* was published last year and

is still selling successfully. The copyright owner would probably be able by injunction to force a change of title of:

1. another novel of the same title, published this year.
2. a play of the same title *on the same theme*.
3. a movie of the same title *on the same theme*.
4. a radio serial of the same title *on the same theme*.
5. another novel on the same theme, with a title so nearly the same that the public would be deceived: *The Elephant's Eye; Elephant's Eyes; Old Elephant's Eye*.
6. if his novel has been dramatized or sold to the movies, any other drama or movie of the same or very similar title, whether on the same theme or not.

He would probably *not* be able to effect a change of title of the following:

1. a novel, play or movie, even if on a similar theme, brought out five or so years later, after his novel is out of print or no longer selling in any quantity.
2. a short story, poem, or child's book (i.e. a work of another *genre*) with the same title.
3. a satire or parody of his work, on stage, screen or in literary form, of the same or similar title.
4. any work, if the same title has been used many times before for novels, magazine articles, short stories, or plays.

(b) The work is a juvenile, short story, or poem entitled *Elephant's Eye*. Unless it had been dramatized or sold to the movies, the copyright owner would probably not be able to effect a change of title on any other work unless it was of the same *genre* as his, on a similar theme, and capable of deceiving the public. If his work has been dramatized or sold to the movies, he could probably stop any other drama or movie with the same title.

(c) The novel, drama, or movie is entitled *George Washington*.

1. The copyright owner could not prevent the use of the title by anyone else, unless he could prove that the public was being misled into thinking that the competing work was his—i.e. that it is being passed off as the work of another. A competing *Abraham Lincoln* was prevented from being foisted upon the public during the time Drinkwater's *Abraham Lincoln* was having its initial success and with a great deal of publicity was touring the country.

(d) A copyright on a work entitled *Hamlet*, or any other title or phrase in the public domain, or based on any material no longer in copyright, does not prevent anyone else from using the same title.

In general, to prevent someone else's using his title, the copyright owner should be able to show direct unfair competition (q.v.), preventing the full realization of the profits of his work, or that the public has been deliberately deceived or confused.

As already has been implied, the courts are much quicker to see unfair competition and wilful fraud in connection with title duplication of periodicals, newspapers, dramas, and movies.

In the case of motion pictures, no duplication is allowed of any title of a copyrighted work that is not purely descriptive. 'The Gold Diggers' suit is an illustration of this principle (see page 123). In the case of a descriptive title, however, the copyright owner of a book entitled *The Test Pilot*, made up of a series of articles on factual flying experiences, was unable to prevent Metro-Goldwyn from using the same title for a fictional biographical film. If a movie is based on material in the public domain—a work no longer in copyright—or on history or biography, duplication in title will only be prohibited if the first work has had so great a success that the title has acquired a 'secondary meaning' (as in Drinkwater's *Abraham Lincoln*), so that the public will be deceived. In Ernest Hemingway's case contending that a film title *Fifth Column Squad* constituted unfair competition against his play *The Fifth Column*, the court declared,

It is equally true that, where a play has attained such popularity that its title has acquired a secondary meaning, one associated with or suggestive of the play, a rival producer will not be permitted to use or simulate the title, or any part of it, in such manner as to deceive or mislead the theatre-going public into believing that the later production is a motion-picture version of the earlier play . . . 'It is not essential to prove actual confusion, deception or bad faith as a basis for injunctive relief to prevent the use of a name which is likely to lead to confusion.'

In the case of newspapers and periodicals, direct competition is the decisive factor: the Philadelphia publisher of *Suburban Life* was able to stop by injunction the issuance of *Philadelphia Suburban Life*, which imitated it in appearance and subject matter.

A change of title does not affect the copyright of the work, but for his own protection against innocent infringers the copyright owner should have the new title recorded and should have the original title appear somewhere on the new edition. This is not a matter of copyright law but of common sense. Moreover it is generally required under 'fair trade' laws.

There have been many attempts to prolong the life of a literary

copyright by registering a title or a pen name, or the name of one of the characters, as a trade mark. Sometimes such registration can be made, not through the Copyright Office, but at the Patent Office. In no case, however, can a trade mark protect the work itself, or prolong the copyright of a work once it has fallen into the public domain, i.e. after the copyright has expired. Every publisher who has been in business since the 1880's has probably heard of the Mark Twain case. Clemens tried to prevent the use of his trade mark (Mark Twain) on reprints of his works that were no longer in copyright, but the courts refused to sanction this.

In the 'Nick Carter' case, Street and Smith had registered *Nick Carter* as a trade mark of their detective-story weekly, devoted to various tales about the character Nick Carter. They did not copyright the magazine or the individual stories. When a motion picture company produced a movie entitled *Nick Carter*, using the same character but in a new plot, Street and Smith had no protection against it. A registered trade mark would protect it against another periodical using the same name, but, as the judge ruled, literary property cannot be protected by a trade mark, or in any other way than by copyright. He went on to quote from the case of *Black v. Ehrich*:

Neither the author nor the proprietor of a literary work has any property in its name. It is a term of description which serves to identify the work; but any other person can, with impunity, adopt it and apply it to any other book, or to any trade commodity, provided he does not use it as a false token to induce the public to believe that the thing to which it is applied is the identical thing which it originally designated. If literary property could be protected under the theory that the name by which it is christened is equivalent to a trade mark, there would be no necessity for copyright laws.

# Unfair Competition

'UNFAIR COMPETITION' in literary matters has been defined in court as passing off on the public the product of one person as that of another. Hence fraud and deception are major if not always essential elements.

The publication of 'Dr. Eliot's Five Foot Shelf of the World's Greatest Books' did not infringe on the copyright of 'Dr. Eliot's Five Foot Shelf of Books,' as there could be no copyright on the title or the idea; the original publishers of 'Dr. Eliot' won their suit, however, under the laws relating to unfair competition. As the court declared, 'the decisive fact is that the defendants are unfairly and fraudulently attempting to trade upon the reputation which the plaintiff has built up for its books.'

The two key questions are (1) whether the original author suffers loss (of sales or prestige); and (2) whether the public is deceived. However, although the second element, fraud, is usually a factor, it is not absolutely requisite for it to be present in order for an author to obtain relief. In some circumstances an author can win protection against the unfair use of his work even though the public is not deceived. When a radio company read over the air in five successive programs a complete current 'best seller,' the author sued successfully in the state courts and recovered substantial damages. Certainly in this case the public was not deceived about the author or title.

Although it is mere conjecture, many people feel that if the Kreymborg-Durante case (see page 151) should be tried again under the laws relating to unfair competition, the poet might fare differently than he did before—and the whole question of the use of 'books' on the radio might have a more equitable solution (see Radio).

The deliberate misappropriation of titles is often prevented on the grounds of unfair competition (see Titles). So too can an author in many cases protect characters that he has popularized, and his pen name, as well.

The great differences in state laws on this subject make any general discussion of it unprofitable. Unfair competition has nothing to do with copyright. It has much to do with the individual copyright owner's development and exploitation of his property.

# Unpublished Works

A 'book' (Class A) may not secure statutory copyright before publication. Until it is published it is protected at common law (q.v.). The cautious author who sends a copy of his manuscript to the Copyright Office before submitting it to a publisher only has it returned to him, with the advice to offer it for registration after publication with proper notice. It is vital, therefore, that an author should know specifically and definitely what publication consists of, from the point of view of the copyright law.

If the author of a text book has his manuscript mimeographed and sells copies of it to his students, or, for that matter, generally distributes copies gratis, he has 'published' his book and is liable to lose his rights through publication without notice. However, he may recite his work in public (if, for example, he is a poet, story teller, or radio performer); he may send copies to his friends; or he may authorize a performance of his play without jeopardizing his rights. Publication, with respect to copyright, is exclusively the reproduction in copies for sale or general distribution.

There are certain types of works which may secure statutory copyright before publication. Lectures, sermons, and similar works intended for oral delivery (including unpublished radio scripts) (Class C); unpublished plays and other dramatic works, or musical dramas (Class D); and unpublished music (Class E) can all be registered for copyright on the appropriate application forms, with the deposit of one copy. Works of art (Class G) and plastic works or drawings (Class I) can be copyrighted by proper registration and the deposit of a photograph or some other identifying reproduction. Unpublished photographs (Class J) may be copyrighted by registration and the deposit of one print. Various types of motion pictures (Classes L and M) may also be copyrighted before publication (but not motion picture scripts or scenarios). On all classes of unpublished work, the registration fee is \$1.

If the author of an unpublished work takes out statutory copyright, his common-law rights cease when his statutory rights begin. His

statutory copyright dates 28 years from the deposit of his work in the Copyright Office. (This is the interpretation of the Copyright Office and the courts; the law itself is not explicit here.) If his work is published later—a collection of his lectures, for example (Form A1), or publication of his play or radio scripts in book form (Form D1)—he must register it again under the proper classification and pay a second fee (\$2). This second registration does not affect the original date of the copyright, so far as its duration is concerned. However, if substantial new matter is included in the published version, a second copyright covering it should be registered, as it becomes in effect a ‘new work.’

In the case of an unpublished literary work, the deposit copy should be neatly typed or written in clean and legible form, and the pages fastened together. It must be complete, should have the author’s name on it, and must have a title of some sort that corresponds to the one in the application. The title is not protected by copyright, but is necessary for purposes of identification. If a different title is used later for publication (or even if it is changed for the public presentation of a play, song, or radio script) it is advisable, but not required, to list the new title with the Copyright Office, for protection against the ‘innocent infringer.’

One of the changes advocated by those who urge a revamping of our copyright law is discontinuance of the distinction between published and unpublished works. Under the International Copyright Union, the author receives theoretically unlimited copyright protection from the moment of his work’s creation, extending, so long as it is not ‘dedicated to the public,’ for fifty years after his death.

## PART III



# Questions on Copyright Practice

The questions in this section were submitted by publishers, authors, and agents as those most frequently arising and most vexing in regard to copyright. Duplicates were of course eliminated, but similar questions were included if the variation suggested a further complication. The author wishes to thank the many people whose co-operation made the section possible.

## AD INTERIM COPYRIGHT

*Who is the proprietor of a book being registered for ad interim copyright? (a) The author? (b) The English publisher? (c) The American publisher?*

Conceivably it might be any one of the three. If the author retains the copyright, (a). If the English publisher owns the copyright and has not yet arranged for American publication but wants to protect his book, (b). If the copyright has been assigned (by contract or agreement) to the American publisher, (c).

*How does the President's proclamation waiving the time limit on ad interim copyrights affect the duration of the copyright of the American edition?*

It does not. The copyright starts with first publication. The American edition may be published three or four years after first publication in England, but the copyright term starts with the English publication.

*What is the significance of the presidential proclamation of 10 March 1944?*

The effect of the President's proclamation was to waive the time limits in regard to both ad interim copyright and the publication of the American edition of books by British nationals and citizens of Palestine first published abroad. In other words, the 60-day limit for ad interim registration and the 4-month limit for manufacture were waived for the duration of the war and until a second proclamation. Applications for renewals of copyrights owned by British authors may be made any time after the beginning of the renewal year; that is, the requirement of making the application before the end of the 28th year was also waived.

Applications for ad interim copyright or renewal that were refused between 3 September 1939 and the date of the proclamation (10 March 1944), because they were received too late, may be resubmitted.

A British Order in Council extended to American citizens a similar extension of privilege: Publication in Great Britain need not be within 14 days of United States publication, but will for the war period be considered simultaneous whenever made.

*Does the American edition of a book on which ad interim copyright is secured carry the date of its first publication or its American publication?*

Since the copyright presumably starts with first publication, it should carry the year of its foreign publication.

### AFFIDAVITS

*Must an affidavit be signed by the officer of the company?*

No, any 'authorized agent' may sign an affidavit.

*What is meant on the affidavit by 'the date of the completion of the printing'?*

The Copyright Office interprets this as the day the first copy comes off press. This line need not be filled in if the publication date is given, but must be if the printer signs the affidavit.

*How should the affidavit be filled in for an American edition photographed from an English book?*

Alternative (2) should be checked, '*by lithographic or photo-engraving process wholly performed within the limits of the United States by.....*', followed by the name of the company who did the photographing.

*What should be filled in on the second line of the affidavit on Form A?*

On some ad interim affidavit forms an extra line was included by error. It should be disregarded.

### ANTHOLOGIES

*Permission rights are usually given for a trade or special edition. If one obtains permission rights for a trade edition and then finds that there is a school market (textbook) for the same work, is one obliged*

*to pay new permissions? Also, if the reverse procedure obtains, is one obliged to pay new permissions?*

Ordinarily, permission rights apply to all editions of an existing title. However, the wise author and publisher should protect himself when asking for permission by stipulating that the rights requested are also for any future editions of the same title, in the United States, Canada, Great Britain and the British Dominions, and South America.

*When compiling anthologies or collections of short stories, exactly what rights do the publishers of these books demand?*

The right to include the stories in any edition of their anthology (usually trade, school, limited, and reprint editions) to be published in the United States (and usually Canada). If they wish rights also for South America, England, or international rights, it should be so stated in the request.

*In regard to copyrighting plays, if an original play or an original translation of a play is included in an anthology, does the general copyright of the book protect the author's and publisher's rights? Can a play be copyrighted separately?*

If no copyright has previously been registered for the play, the copyright of the anthology will protect it, providing it has never been published before and providing the author has assigned his common-law rights in it to the owner of the copyright of the anthology. If the author wishes to reserve the copyright for himself, his best course is to copyright the play in his own name before publication of the anthology, and then stipulate that his copyright notice must be given in the text. A play, unlike a 'book,' may be copyrighted at any time before publication, whether it has or has not been performed publicly.

*Why is there no uniform ruling governing the transfer of copyright and rights in regard to anthologies and collections of short stories?*

The granting of permission to use copyright material in an anthology or collection is almost always a license, not an assignment. In other words, the copyright itself is not transferred, but only the right to use the material in a given medium. Hence every case is a special one, to be determined by the copyright owner and the author or publisher of the anthology. The three important points to be stated in the written agreement granting the permission (to be signed by both parties) are:

1. In what editions the material is to be used.
2. In what countries it may be published.
3. That the copyright notice of the owner of the material (the word copyright, the date, and the name of the proprietor) be printed on the first page of the text of the material in every case.

### ASSIGNMENT

*Why is it that a book publisher who is bringing out a book containing material that has previously been published in a magazine is obliged to get an Assignment of Copyright from the magazine even when the author stipulated that he was selling only magazine rights?*

There can be only one existing copyright on any material and the book publisher has no legal right to place a copyright notice on a book containing material that is at the time registered in another's name—i.e. that of the publisher of the magazine. The law reads that the name of the assignee may be substituted in the notice after the assignment has been recorded. See below. If the author had had a separate notice on his magazine contribution and also had the book copyrighted in his name, no assignment would be necessary.

*When a book publication has been made of a story that has previously appeared in serial form, and the serial copyrighted as a whole in the name of the publisher, how important is it that the copyright assignment to the author be recorded in Washington prior to the publication of the book, the book copyright reading in the author's name? In other words, the law specifies that after the copyright has been assigned and the assignment recorded, the name of the assignee may be substituted in the copyright notice. If a book is published before this formality can be complied with, what effect has it upon the original serial copyright as well as upon the book copyright?*

If it is done with the copyright owner's consent, it may imperil the copyright, should it ever be challenged. In 99 cases out of 100 when this law is broken, it is undetected. The hundredth time the copyright is lost. In other words, if you have something worth stealing, the unscrupulous person will search for every possible way to get it and still remain within the law.

*In what instance is it advisable to get an assignment rather than a mere license? What is the value of an assignment that contains exceptions? Does this type of assignment allow the assignee to print the*

*copyright in his own name without mention of the original magazine publisher?*

If you have a license, you have only the rights specifically listed in your contract. In case of an infringement, the copyright owner has the right to sue—not you. All subsidiary rights also belong to copyright owner.

An assignment cannot have 'exceptions.' It must be complete, or else it is a license. A licensee cannot print a copyright notice in his own name, as he has no claim to the copyright. He must print the name of the real copyright owner. Thus the name of the magazine publisher who 'assigns' (licenses) back to the author (or to another publisher) only certain rights must appear on every future use of the material.

*There is often confusion concerning first, second, and other serial rights and book rights to a manuscript purchased by a magazine.*

The rights purchased by a magazine depend entirely on the individual contract. One or two of the leading national magazines buy all rights (i.e. have an outright assignment of copyright) and license the book rights to subsequent publishers. Usually, however, the various serial rights are disposed of separately, the author holding the equitable copyright even though the first serial publication is protected by the copyright of the magazine. In this case, the magazine assigns the copyright to the author after publication, or on demand.

*Another question frequently raised by writers is what permanent rights authors retain to basic material on central ideas that appear in stories. It has been our observation that many writers attempt to resell ideas of this type, frequently to the embarrassment of editors who have purchased the original material.*

It is possible to bind the author by the first contract not to write 'on a similar theme' for any other magazine for a given period. However, unless this is expressly stated, the author is free to use his idea in other forms where he will. Ideas are not subject to copyright.

#### CLASSIFICATION

*May a publisher copyright a book as an original work, four-fifths of whose content consists of original commentary, explanation, exercises, pupil drills, and line-cut illustrations which aim to clarify the remaining one-fifth of the content, which is textual material that had previ-*

*ously been published and copyrighted separately by the same publisher? Or must the book be copyrighted as a reissued work? (In other words, is the dog wagging the tail, or the tail, the dog?)*

It will be safer to copyright this as a reissued work (A2), since otherwise the copyright on basic material on which the whole work centers is endangered. Even if the tail is longer than the dog, it is the dog who makes it wag.

*How should a set of cards for teaching code flags be copyrighted? Should the container, which bears a description of the cards, and the page of directions be copyrighted also?*

If the cards contain only pictures of the flags—i.e. only material that is in the public domain—they are not subject to copyright. The page of directions is, however, on Form A1—as a ‘book.’ If the arrangement or selection of the cards has an ‘original’ element, they too are subject to copyright, also as a ‘book.’ In filling out the application you will discover that there is no ‘binder’—hence you leave that line blank, or write parenthetically (‘unbound’). If you wish to copyright the container also, be sure that it carries the proper notice (© and initials of the copyright owner will suffice, if the full name appears elsewhere). It must then be copyrighted as a ‘label’ on KK (fee \$6).

*How do you copyright a book which has formerly been printed in article or short-story form and then enlarged to book size by the addition of illustrations?*

Use application Form A2, ‘a reissue of a book,’ specifying the new material that has been added. The copyright notice need be only of the book version, but ordinarily includes both magazine and book publication dates, with some such line, as ‘Based on a short story of the same title published in.....’

*Is a manuscript copyrightable?*

An unpublished manuscript of a sermon, lecture, address (Class C); a drama (D) or music (E) may be copyrighted. That of a book, poem, short story, et cetera (Classes A and B) may not.

*Can a book be patented?*

No. A title or a pseudonym may be registered as a trade mark, and in some cases the idea or subject matter of a book, such as a method

of procedure, may receive a patent or a 'design patent.' This is true in the case of advertising catalogues, prints, et cetera.

*How should the following works be classified?*

- (a) *a compilation of English folk songs with music?*
- (b) *a book of children's dances, some still under copyright?*
- (c) *a book of new (uncopyrighted) college songs?*
- (d) *a collection of Gilbert and Sullivan lyrics?*
- (e) *an acting version of a drama in the public domain?*
- (f) *a separate copyright for a photograph first published in a travel book?*
- (g) *a new edition with new annotations, illustrations, and introduction of Jane Eyre?*

(a), (b), and (c) all E, but in (b) the copyrighted songs should carry a separate notice. (d) would be A, if it were subject to copyright at all—i.e. had some 'originality.' (e) would be D1 or D2, but the new material should be indicated. (f) would be K. (g) would be A2.

#### DEPOSIT

*We add, from time to time, certain features to our Bibles, such as the 'Hour of Prayer,' or 'Bible Helps,' or 'Questions and Answers.' May we secure copyright on these by sending sheets of this additional material, or must text be bound in with Bible and Bible sent?*

The Copyright Act specifies that a copy of the *best* edition be deposited, which means that the complete volume is required.

*Is a copyright no good if you fail to deposit copies?*

Failure to deposit does not invalidate the copyright until three months after the Copyright Office has demanded deposit (or six months, for a foreign publication). Not only is the copyright lost then but the copyright proprietor is liable to a fine of \$100 plus twice the retail price of the best edition.

#### DURATION

*Does suspension of publication of a copyrighted book during the life of the copyright invalidate the copyright?*

Once a book is published, its continued publication has nothing to do with the life of its copyright. A book might be published in May 1945 and go out of print in June of the same year. Its publisher might go bankrupt. Its author might die in December 1945, without widow

or child, and leaving no will. In May 1973, the author's third cousin, who is his next of kin, may renew the copyright—which will then extend until 2001. If in the year 2000 a publisher brings out a reprint of this book without the copyright renewal claimant's permission, he is infringing and subject to forfeiture of his product and payment of damage.

*Under the English Law, what is the duration of copyright secured by a publisher of a composite work, such as a dictionary or encyclopedia?*

'A juristic person' who is the copyright owner of a cyclopedic work controls the copyright for 50 years after publication. A co-author of a composite work holds the copyright for 50 years after the death of whichever co-author dies first.

### FAIR USE

*To what extent may an editor, in writing a story about a columnist, incorporate in that story without danger of copyright infringement the entire column of that day for the purpose of dissecting and analyzing the columnist's views? Does this fall within the doctrine of fair use?*

It would not be safe to use an entire column without permission; it is not 'fair use' to quote any single unit in full. It would be much safer to use parts of various columns, breaking them after every 100 words or so with commentary and interpretation—or to get the columnist's permission. Understandably a columnist could prove competition, republication, and definite copying if his whole day's work were reproduced in one piece, for whatever motive.

*In a war story on songs of other wars, may an editor take whole verses from each of several songs and use them for purposes of illustrating differences between the songs current in World War I and those current in World War II, for example?*

See preceding query. It is never safe to quote a whole stanza without permission, although it is sometimes done without penalty. However, the fact that cases of this type so often come before the courts proves that time and trouble will be saved by getting permission first. Most copyright owners will regard quotation for such a purpose good publicity and give permission gladly. If one does not, you may congratulate yourself on having discovered the possible source of an unpleasant copyright case, and find some other song to quote.

*How far can one reprint a poem in a critical analysis of poetry of various periods or of various authors? For example, may an editor use as much as one of four stanzas in such a story?*

See the questions above regarding the use of a complete 'unit' without permission. If the stanza is broken by interpolation or exposition, it would not be so likely to bring objection. If the article is really a critical analysis of contemporary verse, it would probably be uncontested even if the whole stanza were used, but it is the occasional 'crank,' the 'ninety-ninth' person who creates the hazard. One contemporary author settled out of court for \$1000 for using two lines of verse without permission—probably if he had fought the case he would have won, but he would also have a disagreeable time of it. Poets and musicians are jealous of their wares. It takes but a little effort to ask permission; it is good practice to do so for more than two or three lines of verse.

*Is it necessary to get permission or make acknowledgment if in a book for popular consumption I retell in my own words certain facts about, for example, economic conditions in the time of the Revolutionary War gleaned from some study written for the scholars, assuming that I follow my source closely enough for experts in the field to prove my dependence on it?*

If you use a copyrighted book for your source material without doing any further research or checking, you are copying, even though you use your own words and not the author's. You are making 'another version' of his work, and that right is granted exclusively to him. Make your 'version,' give credit, and get the author's permission. He'll usually give it with pleasure. If he doesn't, you can always dig back into the sources he used—though it does take considerably longer time.

*One of the most frequent problems is how far it is permissible to quote from a current copyrighted book or article a poem or song. Authors frequently insert in their stories—and indeed they make it an integral part of the story sometimes—a quotation of a verse from a song, perhaps a complete stanza of four lines.*

The two most pertinent cases involving this sort of quotation are the McEvoy case, quoted on page 86, and the Spaeth case, quoted on page 146. In the first, the courts upheld the author who used a copyrighted song for background use; in the second, they decided against an author who used a full stanza, *with music*, in a book that

might conceivably compete with the original author's interests. In a more recent case, that of *Karll v. The Curtis Publishing Company* (7.2.41) the complete chorus was given, but without music, of the Green Bay Packers' football song in an article about the Packers—'Little Town that Leads 'em'—published in *The Saturday Evening Post*. Credit was given to the author of the song, but even so he brought suit. In giving the decision in favor of the publishers, the court declared, '[To determine fair use] the courts must look to the nature and objects of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, diminish the profits, or supersede the objects of the original work.' In this case, the quotation was declared to be 'incidental' and fair use. 'Fair use' is a ticklish subject. It is much the safest policy to get the author's consent—usually wasting only the paper and a 3¢ stamp—rather than run the risk of a suit or even a threatened suit, which often is a sort of literary blackmail.

### FEES

*Will you give a scale of fair fees for permission to reprint material from other publications? If not, could some sort of guide be included?*

It is impossible to give a uniform rate of fees to be used by all publishers. In the first place, it would probably be illegal, smacking of 'collusion.' Secondly, a uniform rate would not be desirable or sensible. Why should a textbook publisher demand the same fee per page as the publisher of a best-selling short story? Or of a first-class popular poet? Also, if a whole unit is used (short story, article, poem, book) the fee is reckoned on the unit, not by the page.

A uniform consistent scale of fees within the individual publishing house is desirable and should be established. There should be a rate per page and a rate per unit, with a sliding scale based on (possibly) four contributing factors: (1) the popularity of the author; (2) the date of the copyright; (3) the use being made of the material; (4) the individual author's attitude about being quoted.

### ILLUSTRATIONS

*If material is copyrighted by the author, does that include illustrations contained in the book, too?*

A single copyright notice on a book protects all copyrightable material in it. If the text is by one person and the illustrations are by

another, the author of the text may be considered as taking out the copyright in trust for the illustrator. For purposes of renewal, however, the illustrator's name should be entered also on the line in the application form calling for author (line 3).

*Is the use of photographs on jackets of books regarded as ordinary publishing or as advertising?*

Anything on a book jacket is advertising and, if it is not in the public domain, should not be used without written permission. Since the book jacket carries no copyright notice, after publication it may be used by anyone else. Therefore if anything on the jacket is copyrighted, such as an illustration from the book, it should carry a credit line.

*Do rights on photographs survive the subject's death? Can a photograph of any deceased person be used in advertising?*

A photograph, if it is unpublished and has never been registered for copyright, is protected by the common-law rights of the subject if it has been taken on order, or of the photographer, if he has acquired the subject's permission by payment or otherwise. These rights pass on to his heirs on his death. If the photograph has been copyrighted, it is protected by the copyright owner (the heir of the original owner, on his death) for the statutory term. Even if the photograph has been 'dedicated to the public' (i.e. published without notice) its use both before and after the death of the subject depends upon the laws of the state in which the owner resides or in which it is used. Some states have laws respecting the individual's 'right of privacy'; some do not.

#### INTERNATIONAL COPYRIGHT AND BOOKS OF FOREIGN ORIGIN

*List all the countries that subscribe to our copyright laws, and any special regulations that cover each country.*

Following the article on International Copyright Relations is a list showing countries having reciprocal copyright treaties or agreements with the United States (page 104). In most of these countries if a work is copyrighted in the United States it is protected in the treaty country also. Some, however, require first publication and/or the observance of formalities, as is indicated in the list. Any country belonging to the International Copyright Union will respect the copy-

right of any American book that is published for the first time, or simultaneously with its first American publication, in a unionist country. To secure International Copyright protection the author should arrange through his publisher to have his book published in Great Britain or Canada on the same day it is published in the United States. The two-week interval allowed by British countries is not accepted by the other unionist countries.

The duration of the copyright is governed by the country of origin, but if publication occurs simultaneously in a unionist country and a non-unionist country, the unionist country governs the term. In most countries it extends for 50 years after the author's death.

It should be remembered that with countries with whom we have reciprocal copyright agreements, our copyright relation is according to that agreement, not through the International Copyright Union, even though we have published simultaneously in a Union country. In Italy, for example, a deposit copy is required; in Spain, registration.

Most South American countries belong to the Buenos Aires Convention, according to which publication in any signatory country, with a notice of the reservation of rights, protects a book in all signatory countries. Nevertheless almost all countries have individual formalities that authors 'first publishing' there must observe. To make sure of South American rights it is well to deal through an authorized South American agent.

*Please explain what the relation between American copyright and British copyright is and what are the regulations governing British copyright.*

Although United States copyright is based on the earlier British law, there are today several fundamental differences.

(a) UNPUBLISHED WORKS:

All unpublished works of British subjects or residents are protected in Britain by statutory copyright rather than at common law. In the United States, 'literary works' are protected at common law until publication and only works capable of public performance and execution (lectures, music, drama, art, et cetera) may be copyrighted before publication. Works of this type, if copyrighted in the United States, are automatically protected in Great Britain, but only for the duration of their American copyright (28 plus 28 years). If they are later published they must conform to British copyright requirements.

(b) FORMALITIES:

The British Copyright Law requires no formalities, such as notice and registration, but does require the deposit of one copy to the trustees of the British Museum within a month of publication, and, if they are requested, to certain other Government and University libraries: Bodleian, Cambridge, Edinburgh, Trinity College, Dublin, and Wales. Failure to deposit does not invalidate the copyright but makes the publisher liable to fine.

(c) PUBLICATION:

In Great Britain this is defined as 'the issue of copies to the public,' and for copyright purposes first publication is considered to be the same as simultaneous publication—i.e. within two weeks. (But see wartime exception, page 35.)

In the United States publication means the sale of copies to the public, or distribution of copies to the public, and if ad interim copyright is secured for a book in English published abroad within 60 days of its first publication, the American edition may be published any time within the next four months.

(d) DURATION:

British copyright, for most published or unpublished works, extends for 50 years after the author's death. For unpublished copyrighted American works, however, the term of our own law applies. Unpublished American works protected only at common law are not protected in Great Britain, since all British copyright is statutory. American works first (or simultaneously) published in Great Britain are protected (presumably) for 50 years after the author's death, even though their copyright in the United States expires before that time.

(e) RIGHTS:

Radio, performance, and mechanical reproduction rights are secured to literary works in Britain, in addition to all other rights that are secured also in America.

(f) INTERNATIONAL COPYRIGHT UNION:

Britain is a member of the International Copyright Union, and also has a copyright agreement with the United States, articulated in 1915. Works first published in the United States are not protected in Great Britain unless they are published there simultaneously (within two weeks) or are first published in another unionist country.

*In cases where a publisher formerly imported unbound copies of books, and because of present conditions now is having the book completely manufactured in this country, can the book now be copyrighted or does the fact of previous importation prevent copyright?*

If the book was sold in this country without copyright notice, and by the authority of the owner, it is now in the public domain—i.e. cannot be registered for copyright. If a registration of copyright is issued, it is liable to invalidation if challenged.

*It has been our experience that British publishers expect courtesy fees for the use in this country of non-copyright material which is protected in the British Empire. It occurs to me that this may not be known to some of the publishers in the United States.*

Foreign publishers do usually ask fees for the use of material in copyright in its native country but not in the United States, just as United States publishers sell foreign 'rights' on works that have never been copyrighted outside of this country. There is no 'legal' basis for the fee in either case, but convention—and self-protection—serve to prevent the unauthorized use of unprotected works.

*Not infrequently a request to quote from some book is referred by the publisher whose name appears on it to a publisher in England, from whom a reply cannot be expected in time to keep within publication schedules. Since an English copyright has no legal standing in this country unless there is also an American copyright, is there any reason why I should not go ahead with use of the quotation, provided there will be no sale abroad?*

There is certainly no reason if the quotation is not more than a few hundred words, say, and is in a scholarly, scientific, or discursive work. In a work of this type you would of course give credit to author, book, and publisher. For a very long quotation, or one in a compilation, anthology, or for commercial use, you would do better to await permission from the English publisher. During World Wars I and II the practice of many houses was to ask permission from England, and then, when time no longer could be spent awaiting a reply, going ahead. This would not do for works to be included in an anthology, digest, or reprint, nor would it be a good idea to quote anything at all in the case of various outstanding English playwrights and poets. Certain authors both English and American are 'hypersensitive' to quotation. It is well for the publisher to discover who these are.

*Fairly often a book appears in England and then, a considerable time later, in the United States. Has it any copyright in this country? I am thinking of some of the early books of authors like Kipling and Masefield—the latter's Salt Water Ballads, for example.*

If the English edition appeared earlier than six months before the American edition, generally speaking there can be no United States copyright. However, there are possible exceptions, such as in the case of books published during the First and Second World Wars, while the time requirements were waived. Any book sold in this country without a United States copyright notice can never have a valid copyright here, whether manufactured here or not. The English as well as the authorized but non-copyright American editions are protected only by 'courtesy' copyright—which means that most publishers do not pirate works of their competitors.

*I believe this needs very clear treatment, because of the likelihood of increased international interchange of written materials at the end of the war: an uncopyrighted book appearing in France could be reproduced by offset in the United States at a fraction of the normal cost. Would this be permissible?*

I assume that you mean a book with a French copyright but having no United States copyright. If it was a contemporary book, even though the copyright had not been registered in the United States, it would be dangerous to reproduce it by offset. As has been said earlier, publication with notice originates copyright—and France and the United States have a reciprocal copyright agreement. Furthermore, the sale of books in France without United States copyright notice does not preclude a United States copyright if the book is not sold here. An edition with a United States copyright notice may also have been published. This whole matter will be cleared up if and when the United States joins the International Copyright Union, and that is one of the most important reasons for our doing so. For if we can offset foreign books at our pleasure, without the owner's permission, so can our books be offset without permission abroad. The *Gone with the Wind* case (see page 107) proves how little a publisher who wants to pirate is impeded by a technical 'simultaneous publication.'

*Do you consider that it would be as desirable, in securing International Copyright, to publish in Canada simultaneously with American publication, Canada being British territory, and make registration*

*both at Ottawa and in the British Museum at London? If the formality of registration and deposit in London were omitted, and registration made at Ottawa only, do you consider that less desirable than the proceeding outlined above?*

International Copyright under the Berne Convention may be obtained by simultaneous publication in the United States and any country that belongs to the Union. However, since 'simultaneous publication' in Canada is open to question because of the clauses in its Copyright Act prohibiting importation within two weeks of publication (see next question) and the licensing of books not manufactured in Canada, my feeling is that simultaneous publication in Great Britain or some other International Copyright Union country is preferable.

*In view of the decision in Holland on *Gone with the Wind*, do you consider that it is practically safer to send books to England for copyright registration, making publication in England simultaneous with that in America?*

The *Gone with the Wind* case is still not settled, and many people feel that Holland's decision will not be followed by other International Copyright Union countries. It is based not on the place of publication but on what constitutes bona fide publication, and there are other complicating factors. Because of the technicality of the Canadian Copyright Act prohibiting the importation of American books until two weeks after publication, it would seem safer to copyright in some country where the time element of 'first or simultaneous publication' could not be disputed. Remember, however, that England's interpretation of simultaneous publication (within two weeks of first publication) is not that of the International Copyright Union. It must actually be simultaneous, i.e. at the same time, and it must be actual 'publication'—not merely colorable publication, by having a few copies placed on sale.

*How can one determine the date of copyright on a book of songs published in Europe?*

If it was published as a 'book' in England or any British country it will probably be listed in *Whittaker's Reference Catalogue of Current Literature*, complete sets of which are available in most large libraries. The publication date is given in the title index. In most European countries a song would be in copyright during the lifetime of the

author and (usually) 50 years thereafter, regardless of the time of publication. (See the copyright duration for various countries on page 104.) The collection of songs would be protected during the lifetime of the editor or person making the collection, or, if owned by the publisher, for fifty years after publication.

*I have in my possession two books printed in French which appeared originally in Paris around 1880 (eleven years before our copyright agreement with France) and in each there are 1928 copyright notices. I assume that no penalty could be made against a foreign publisher who inserted a false copyright notice in one of his books. Could one, however, publish a book in a foreign language without copyrighted it at the time of publication, and then take out a copyright at a future date?*

The Copyright Act is not clear on this question, and court decisions have been conflicting. The attitude of the present staff of the Copyright Office is that copyright is obtained by first or simultaneous publication with notice; the time of United States registration and deposit (if no copy has been demanded by the Copyright Office) is immaterial. There may be a foreign edition, for foreign sale only, in which no notice is necessary, but any books published or offered for sale in the United States must have a notice. In the case of *Tamas v. Twentieth Century-Fox Film Corporation*, the court declared, 'the failure of the plaintiff to secure copyright in the United States is conclusive evidence of his abandonment of his common-law rights, and makes his story a public property in this country, even though he obtained copyright in Yugoslavia.' The Copyright Office says:

A French book, that is, a book by a French author, originally published in France in 1880, could not under any circumstances be copyrighted. In the first place, no foreign author not domiciled in the United States was entitled to copyright before the Act of 1891, and in the second place, Section 7 of the present Act expressly provides that no copyright shall subsist in any work which was published in this country or any foreign country before July 1, 1909, and was not already copyrighted. There is a penalty provided in Section 29 of the Act for placing a copyright notice with fraudulent intent upon a work which is not copyrighted, and also a penalty for knowingly issuing, selling, or importing any article bearing a notice of copyright which has not been copyrighted. Moreover, Section 30 bars the importation into the United States of works bearing such false notice. It is always difficult to prove fraudulent intent, but I think it might not be too difficult to prove knowledge of the law as against a person who

put a copyright notice on a work by a French author published in 1880 in France.

One point to keep in mind, however, is that the copy bearing a 1928 copyright notice may be a 'reissued book with new copyright material'—i.e. the copyright may protect revisions, editorial equipment, or other material not in the original book.

As to a foreign publisher who inserted a copyright notice fraudulently, if he attempted to have copies of his books shipped into the country for sale and it was discovered that the notice was fraudulent, they would be confiscated (see the statement of the Copyright Office given above).

*Please explain how English 50-years-after-death termination affects us with regard to works published more than fifty-six years ago here. If they are in the public domain here, what about Canada?*

A United States Copyright extends for twenty-eight plus twenty-eight years. The fact that a book is still in copyright in England after that period does not continue its protection here except by 'courtesy.' The book is in copyright in Canada, however, for the duration of its English copyright term. In the Berne Convention the copyright on a book published simultaneously in two countries is never longer than in the country of its origin—i.e. the country of which the author is a citizen. But if it is a case of a union country and non-union country, the Union is country of origin. Hence if we publish simultaneously in England or Canada we are protected there and in other International Copyright Union countries for fifty years after the death of the author, even after the work goes into the public domain here.

*If an American publisher should run low on paper and import sheets on one of his titles from the English publishers of that title (who presumably have ample stock), would he be forfeiting his United States copyright on that book?*

If a book is sold in this country without a copyright notice, it is in the public domain. However, the publisher could not legally import copies of a book he had previously copyrighted—i.e. the customs officials are supposed to bar any foreign edition of a work in copyright here—unless he formally 'abandons' the copyright (see page 94). And of course even if the notice were included in a British edition, it would be 'false' in this country, since no book in the English language

sold in the United States is entitled to copyright if it is not manufactured here. The publisher might 'get by,' but if the copyright were challenged in court at any later time it would be declared invalid.

*Will you please mention the copyright requirements and protection in regard to translations, made by an American author, of books originally published in a foreign country and not yet published here? For example, if an American wants to translate, say, an Italian book published in Italy and have that published by an American publishing house, what copyright restrictions apply to his doing the work?*

(a) If the book is registered for copyright here, he must get permission for the translation from the copyright owner; then he may copyright in his own (the translator's) name.

(b) If it has been sold here without copyright notice, it is in the public domain; he may translate and copyright the translation. However, ethically he is bound to get the permission of the author or foreign proprietor and to pay a courtesy fee if one is demanded. Even so, his right to translate is not exclusive, since the book is in the public domain.

(c) If the book has never been sold in this country, and he does not know whether it is in copyright here or not, he should be careful! Publication with notice establishes copyright whether the copyright is registered or not. Books not sold in the United States do not need a notice. The consensus of opinion is that the first publication must have a notice, but the rule is not established. The would-be translator should not only get in touch with the foreign publisher but should also have a search made by the Copyright Office. If he is sure there is no copyright, he can then go ahead, as under (b) above.

#### NEW EDITIONS, REPRINTS, AND REISSUED BOOKS

*What extent of revision or enlargement is needed to recopyright a book whose copyright has not expired? that is, claim a new copyright in a reissued work?*

The important thing is that there be new material of sufficient importance to justify a copyright in itself (see page 126). Looked at from the point of view of the would-be infringer, would there be any appreciable benefit in using the second edition rather than first edition, without fee, when its copyright expires?

*Can a mimeographed edition of a foreign book secure copyright if published here simultaneously with the foreign book? Will it satisfy the terms of the copyright law if ad interim copyright has previously been secured?*

Yes, if it is actually published here—i.e. sold or distributed to the general public—and the formalities of notice, registration, and deposit are all duly observed. The means of reproduction (manufacture) are not important so long as it is manufactured in this country.

*How may an individual secure international copyright for his work if he does not have a European publisher?*

He cannot. A book must be published simultaneously in an International Copyright Union country to obtain international copyright. If he cannot arrange for this through his American publisher his only recourse is to have it published in England or Canada for a fee, privately. In peace times this can be arranged through any of the better literary agents handling foreign rights, but it is apt to be expensive. The usual procedure is to sell a small number of sheets of the American edition, and have a new title page tipped in.

*What is the procedure and how is the copyright notice handled where a new edition of a book is published with an entirely different title from that used in the original edition?*

If there is no new copyright material in the new edition justifying a new copyright registration, there is no legal requirement under the copyright law of mentioning the old title or of advising the Copyright Office. However, the publisher protects himself by leaning backwards, especially since many states require inclusion of the former title under Fair Trade laws. On the copyright page the notice should read:

Copyright 1940 by John Jones  
Originally published under the title *The Apple Tree*

Thereupon the Copyright Office should be advised of the change of title.

If there is new copyright material, the law requires only one notice. However, the publisher protects himself by having the notice on the copyright page read:

Copyright 1944 and 1946 by John Jones  
Originally published under the title *The Apple Tree*

In making application on Form A2 (or A6, if it was originally published serially), on line (6) calling for the title of the book, enter

*Temptation* (title of first edition: *The Apple Tree*)

*What are author's and publisher's rights with respect to syndication and condensation? I refer here to the material appearing in the original book itself, not rewritten versions.*

Ordinarily, when an author and/or publisher grants syndication or condensation rights it is for a definite outlet. That is, rights are granted to make a condensation for use in a definite series of syndicated papers. If the condensation sells outside of that series, the original publisher's consent is needed again. However, these terms must be explicitly stated in the contract. Many authors ask for veto privilege of the condensation—that is, that the final version should be submitted either to them or to their publishers for approval before publication. This is particularly true of political or controversial books. Understandably, the publishers of the condensation do not like to have such a clause in the contract and will defeat it if the author's prestige is not great enough to give his wishes weight. In all International Copyright Union countries, however, this 'moral right' of the author is accepted as a matter of course.

In most contracts between author and publisher it is agreed that the publisher shall control sales to syndicates and for condensation, and shall share profits (anything from 90-10 to 50-50) with the author. No matter how unlikely future outlets of this sort may appear, provision for them should be made in the first contract.

*How do you copyright a book which has formerly been printed in article or story form and then enlarged to book size?*

As a reissued book (A2), or, if there is enough substantial new text material to make it a 'new version,' A1. If the copyright owner of the magazine publication is different from that of the book, the copyright should be assigned and the assignment recorded. Otherwise the notice should read:

Copyright 1946 by Blank Publishing Company

Based on a short story 'Winter Rain,' copyright 1945 by Magazine Publishers, Inc.

*I've had a great deal of difficulty in securing permission to reprint the work of deceased authors, in cases where their books have gone*

*out of print. In one recent instance the publisher of a particular book no longer had a single copy on his shelves, and knew nothing about the book. Is it safe to reprint in such cases without specific permission, would you say?*

The first thing to do is to have a search made by the Copyright Office to find out if any assignment of copyright has been recorded. Even if the publisher is still the legal owner, an effort to find the author or his heirs should be made. If this sounds like unnecessary expense and precaution, remember that it is more expensive to have to defend yourself in a suit for infringement and in addition possibly sacrifice all the time and expense that have gone into the production of a book.

If the copyright of the book may not have expired—that is, if it is less than 56 years from the date on the copyright notice—it is not safe to reprint without permission, even though the original publisher himself seems apathetic. Perhaps the copyright has now been assigned to the author, or the author's heirs, even though no assignment is on record.

*May a publisher make application for registration of a reissued book in which the revision is solely the substitution of obsolete matter by matter found in a more recent copyrighted book published by the same publisher?*

Yes, but the copyright notice should bear the dates of the first edition of both books as well as the year date of the new edition. If two different authors are involved, credit should be given to both.

*When a book has been published serially and the formalities of copyright assignment duly complied with before publication of the book, and there is no new matter in the book to be copyrighted that did not appear in the serial (which of course is unusual), should the book be filed for copyright registration upon publication, which in effect might be termed a double registration?*

No, but the assignment should be recorded.

*If revisions are made and new copyright is not applied for within a year, can copyright on new edition be secured after a lapse of a year or two?*

Yes, if the notice in the new edition bore a new copyright date. Copyright does not depend on deposit or registration, but on publication with notice. If the Copyright Office had learned of the publica-

tion and demanded (as it has a right to do) the deposit of copies and registration, then if you had not complied you would be subject to fine and the copyright would be invalid.

*How do you copyright a doubleton? Do you just reprint the two original dates and the original copyright owners, or do you copyright as a new volume?*

If there is no new copyright material, only the original dates should be used and no new copyright should be taken out. If the original copyright owners still own the copyrights, their names should be given in the notice. However, if the copyrights have been assigned and the assignment has been recorded, the new owner's name may be used. The notice on the copyright page should indicate to which book each date applies.

*How do you enter a copyright notice on a book whose copyright has been transferred to your company? Is the first date indicated, or the date of the transfer only?*

If the copyright has been assigned and the assignment recorded, the original date of copyright and the present owner's name will suffice. If you prefer, however, you may give the original date (and original owner), and the date of assignment and the new owner. In this case, however, it must be apparent that the second date is that of an assignment, not a new copyright.

#### NOTICE

*If a pamphlet is published without a title page or a cover, and the first page of the pamphlet is the first page of text, can the copyright notice be placed on the reverse of page 1 (that is, page 2 of the text), or must it be placed on the first page?*

As a judge said in the case of a 28-page pamphlet with no title 'on the cover or elsewhere,' 'Congress in enacting the Copyright Act contemplated that each book or publication, to be protected, should have a title and should contain a page devoted, in part at least, to the title . . . I will not say that a copyright notice on the front cover or on the page following, a title page being absent, would not suffice.' From this it would seem that page 2 would suffice—but my advice is to place it on page 1.

*What is the minimum of content of a credit line, which accompanies reprint of copyright material, that will protect the owner of the copy-*

*right in the instance that he permits another to reprint his copyright material in whole or in part?*

Copyright (or Copr.), the year, and the name of the copyright owner. Except in cases that are really 'fair use,' the mere citing of source is not sufficient protection. Even though the publisher of the anthology disregards the instruction, the copyright owner protects himself by making the demand when granting permission.

*In a printed book, the copyright notice is duly printed in the front matter. Stock is in and the publisher unavoidably must postpone until next year. Can a rubber-stamped new copyright notice be stamped on, and be legal?*

Yes, or even a hand-written correction. But when filing your application for registration you will save time and later correspondence by including an explanatory note to the Register of Copyrights.

*Must all copyright and assignment dates appear in the notice?*

The law requires only the most recent copyright date. To be absolutely safe, however, it is a good plan to include earlier copyright dates also.

*If a book is published in England in 1944 and in the United States in 1945, what copyright date does it carry in the notice?*

The date of its first publication: i.e. 1944.

*What happens if the notice is omitted?*

If it is omitted in all copies and the book is published (sold or publicly distributed) the copyright is lost. If it is omitted in only a few copies, by error, no harm is done if an effort is made to correct the error wherever possible.

### PEN NAMES

*My understanding of the law is that the copyright must (or should) be taken out in the 'full legal name' of the copyright owner. However, one or two literary agents with whom we do business assure us that it is perfectly safe to copyright under a fictitious name.*

Nothing in the Copyright Act says that a copyright cannot be taken out under a pseudonym, nor has a case concerning the legality ever come before the courts. However, the Copyright Office does not favor the practice. The law seems to be that if the pseudonym is 'legal' in

the state in which the book is published, it will be legal in a Federal court. When taking out a copyright under a *nom de plume*, the author's real name should be given in parentheses in the copyright application. This will at least facilitate matters when the renewal of copyright is made.

### PERMISSIONS

*Certain publishers call themselves 'authorized publishers' of the works of well-known poets of the last century; and if one writes them about selections, they grant 'permission' to reproduce poems published over 56 years ago and ask for a footnote acknowledgment. Is there any actual obligation to obtain permission or make acknowledgment in such cases?*

There is no legal obligation if you quote from an edition having a copyright notice of over 56 years ago. Be sure, however, you do not use a later edition, which has had editorial emendations or is a revised version. After all, if a publisher has gone to the trouble to perpetuate a 'pure' text of an author, of course he wants credit. And if it is just credit he wants, it doesn't hurt to give it.

*If I want to quote in my book a poem found in a periodical, should I get permission from the publisher of the periodical, or from the poet, or both?*

Permission should come from the copyright owner. If there is no separate copyright notice, the publisher presumably has full responsibility from the author and you need go no further. If there is a separate copyright in the author's name, the publisher's permission may be, but is not necessarily, enough, and you should go to the author—unless the publisher quotes you the author's verdict.

*How many words may one quote from an excerpt without getting the permission of the copyright owner?*

There is no fixed rule about this. In a discursive, scholarly, or scientific book, it is probably safe to quote up to 200 words, if full credit is given to publisher, author, and book. However, no full unit (such as a whole poem, a whole essay, et cetera) should ever be quoted without permission.

In a collection or anthology, nothing should be included without permission.

For commercial purposes or advertising, nothing should be quoted without permission.

In fiction, several lines of prose, song, or poetry (but never a full unit) can safely be quoted for 'background use,' but more than that should not be quoted without permission. It is always easier to ask permission than to argue the case later.

*Can anything definite be said regarding the use of brief quotations in copyrighted material without special permission, for purposes of critical discussion?*

See preceding question on permission. There are practically no suits on record concerning infringement through quotations in critical writing. Nevertheless, the courteous writer—and scholarly writers usually want to be courteous—likes to give credit where it is due. It is always wise to cite publisher, author, and book—and it often sells an extra book or two actually to ask permission.

*A quotation of a verse from a song occurs in a story—a stanza of four lines. Should the author get permission? Would a fee be asked?*

Yes, the author should get the copyright owner's permission. A fee might be asked but probably would not. If the copyright owner did ask one, the quotation could not be used without payment.

*If permission is given for a trade edition, is it o.k. for a school edition too?*

Ordinarily yes, but the condition should be included in the original request.

#### POSTHUMOUS PUBLICATIONS

*When copyright was taken out in the name of a person who died between the time sheets were printed and application for copyright was made, we were refused registration because the copyright was not taken out in the name of a 'living person.' What should we do?*

The copyright application should be in the name of the author's executor, or if he left a will his legatee. A correction of the copyright notice may be made by rubber stamp or even written in by hand, if there is no time to tip in a new page. The circumstances should be explained to the Copyright Office in a letter accompanying the application.

#### PUBLIC DOMAIN

*If a research worker notated a little-known folk melody and brought it out as his own composition (having changed a few notes), could he obtain a valid copyright on the tune? Also, would it be an infringe-*

*ment on his copyright if anyone else published the folk song in its traditional form? This question is on the supposition that the changes were so slight as to make it perfectly evident that the two songs had an identical source.*

No, to both questions. To justify a new copyright, new 'creative' work must be added. Even in case he added enough to secure a copyright, the copyright holder has no exclusive ownership of the original melody. Anyone else could publish it in its traditional form or could adapt it and rework it and then copyright his new version too.

*If a work is in the public domain, may a publisher by reorganization of its content and editing its modernness of language or felicity of expression, with or without altering thought content, claim a copyright in the work as a new publication?*

It depends on how extensive the 'editing' is. If it is simply 'modernizing' the language—changing 'hath' to 'have,' 'should thee wish so to do' to 'should you wish to do so'—it is probable that the copyright, even if he could establish one, would do him little good, since anyone else would be free to do exactly the same thing. The question to determine the copyrightability of new versions is whether the changes are valuable enough to make others adopt them rather than use the original material that is free to all. Also, since the copyright is only on the new material and anyone is free to use the old material as he will, are the changes such that another person could not do exactly the same thing, without copying?

*Why is it that works by 'Samuel L. Clemens' that are in the public domain and can be reprinted without permission require permission when used under the name 'Mark Twain'? Or is this a misconception on my part? If 'Mark Twain' is registered as a trade mark, isn't the period of protection the same as for the work itself?*

A trade mark cannot prolong the life of a copyright. There was long litigation and much 'bluff' on this case, but actually the works may be printed and published whether under Clemens or Mark Twain. In 1883 the court ruled that once a book is in the public domain anyone may reprint it and attribute it to the author either by his own name or pen name or both.

*Suppose I wish to include a piece of old music—for example, 'My Old Kentucky Home'—in a booklet I am printing. I find it in a song-book with the ordinary harmonization and of course have the right*

*to copy it, since it is now in the public domain. However, to save the expense of setting music type I want to have a photo-engraving made of the page from the songbook, cutting off the head and folio and such. Must I have permission from the copyright owner of the songbook to do so?*

Nothing in the Copyright Act would prevent your reproducing material in the public domain by photo-engraving, but the owner of the songbook might be able to recover damages under a state law having to do with unfair competition. Also, if he had done any editing or changing of the music or words he might be able to prove that the changes were protected by his copyright on the collection. You could probably 'get by' without trouble, but unless you like to gamble you would better play safe and ask permission—even though you might have to pay a small fee for the privilege.

*When a book is in the public domain because its copyright has expired, can a new copyright be obtained on a new format, with new illustrations and a new introduction?*

A copyright can be obtained that will cover the new illustrations and introduction. Format as such is not subject to copyright, and of course the copyright on the original material cannot be revived after its term has expired. Anyone else can publish it with other illustrations and another new introduction.

## RADIO

*What can be done about radio use of 'books'?*

Nothing legally under the copyright law, unless a dramatization or 'other version' is made. Under some state laws relating to unfair competition the author may have redress. He should consult a lawyer if his work is used without permission unfairly.

*At the foot of a poem that appeared in a newspaper recently was the line, 'Copyright, 1945. No part of this poem may be reprinted or read over the radio without permission.' Has this any legal significance?*

The only value of such a notice is 'psychological'—certainly not legal. In the first place, the copyright owner's name is omitted, thus making the whole line ineffective. Secondly, no delivery or performance rights are reserved to the copyright owners of 'books' and 'periodicals.' Even if the poem is protected by the over-all copyright of the newspaper, it is still legally unprotected against being read in

public unless it was previously registered as a monologue or drama (classes C and D)—in which case, again, the owner's name would have to appear to preserve the copyright.

### RENEWALS

*If a publisher inadvertently fails to renew for second period in the year due, does he forfeit protection or may he even after two years apply for renewal?*

Sadly, the copyright is void if the work is not renewed before the expiration of 28 years, to the day.

*What is the time of grace permitted in renewing copyright? For instance, if a copyright expires in February 1945, how many days thereafter am I allowed to file copyright renewal? How far in advance may I file renewal?*

If a copyright expires 14 February 1945 the application for renewal must be in the Copyright Office by midnight 13 February 1945. It may be filed there any time between 14 February 1944 and the date of expiration. Although the Copyright Office issues a renewal application form, if the deadline is upon you and no form is at hand, a letter stating the fact and enclosing the renewal fee will suffice. In this case the facts are:

Name, address, and status of renewal claimant (author, widow[er], child[ren], executors, next of kin, if the author is dead and left no will) \*

Complete title of the work

Name of each author of renewable matter

Class, number, and date of the original registration

Name of the original claimant

*The publisher is assigned copyright of an author. Author dies and copyright is about to expire. Publisher wishes to renew copyright. The understanding is that he can't. Copyright must be renewed by author's heirs. Am I correct?*

No. The publisher may renew the copyright in the name of the widow or widower, if there is one; of the child or children, if there is

\* If the proprietor is entitled to renewal his status is stated as:

Proprietor of the posthumous work

Proprietor of the composite work

Proprietor of a work copyrighted by a corporate body otherwise than as assignee or licensee of the author

Proprietor of copyright in a work made for hire

no widow or widower; of the next of kin, if the author died intestate; of the executor, if the author is recently dead and the estate is not settled. He cannot renew it in his own name, and his renewal of it in the name of any of the persons listed above gives him no power over it without direct permission from that person. But it saves the copyright.

*If an author, who has been a member of a corporation (not a publishing firm), appoints as the executor of his will a certain officer of his corporation, not in that officer's personal capacity but only by virtue of his position in the corporation: and if the author's explicit intention as stated in his will and testament is that this officer's successor (or successor in office) shall on assumption of office in the corporation, ipso facto become the executor of the said will: in the case where renewal of copyright in the several works of the said author is being sought, should such officer of the corporation make application for said renewal in his own name or strictly as an officer of the corporation? In other words, should application for renewal of copyright be made in form (a) or (b)?*

- (a) I, John Doe, Secretary of the Hypothetic Corporation, executor of the will of the author, et cetera.
- (b) I, John Doe, Erewhon Drive, Happiness, New York, executor of the will of the author, et cetera.

An author's executor ordinarily does not have renewal privilege of his works. His works may be renewed by his widow or his children. If he leaves no widow or children, his executor may renew it, but so far as the Copyright Office is concerned, the official business capacity of the executor is unimportant. In this case (b) would therefore be the proper form.

*When a publisher wishes to apply for a renewal of copyright may he do so as 'proprietor of copyright in a work made for hire' if the origination of the book came about thus: The publisher hired the author to write a novel of so many words, first to be serialized by the publisher, and subsequently to be published as a book by the same publisher, in consideration for a lump sum of money or several agreed-upon payments to be made at stated intervals during the author's work on the novel.*

This question cannot be answered definitely by quoting the Copyright Act. However, the attitude of the Copyright Office is that a

work 'made for hire' is work written by staff employees or ghost writers, or hired translators—in other words, in a situation of 'master and servant,' not of a contract. A movie script writer hired by a Hollywood producer; a composer or lyricist hired by a music publisher; a staff writer on a newspaper—these people produce work 'done for hire.'

*The law says if an author is dead, the renewal must be obtained by his wife, or his heirs, or the executor named in his will. If the wife also dies, should the renewal be obtained by her executor or the executor in the author's will (presuming they are different executors, of course)?*

The Copyright Act stipulates that if an author is dead the renewal may be made by

- I. His widow. If there is no widow, by
- II. His child. If there are no children, by
- III. The author's executor. If he died intestate, by
- IV. The author's next of kin.

Legally adopted children may qualify as II. Under IV, actual blood-relatives are qualified—not a sister-in-law, uncle by marriage, et cetera.

From this it follows that the wife's executor would in no circumstances be qualified to make the renewal.

*Can a publisher to whom copyright is assigned apply for renewal if the author dies during renewal year?*

Not in his name, as assignee. However, if the author applied for renewal before his death and assigned the new copyright during the renewal year, the assignment would probably be binding.

*If a story, x, was published in a magazine in 1895 and later published in a book collection in 1916, and the copyright on the book was renewed in 1944, would the copyright on x still be valid?*

Not unless the copyright on x was renewed in 1923.

## TITLES

*What can be said about the protection of titles of literary works?*

Titles are not subject to copyright, and can only be protected through laws relating to unfair competition. A title taken from a quotation in the public domain is free to anyone. Titles of newspapers and magazines, dramas, and moving pictures are more likely to be

protected by the courts than titles of short stories, poems, or novels. If a title has been used many times before, the author will have a hard time proving even unfair competition, as he will also in the case of a purely descriptive title—*Adventure, Ghost Story, Western Tales, et cetera.*

### UNFAIR COMPETITION

*Does a copyright holder of a book also possess the rights to the reproducibility of the type-matter in which his book is set? For example, an author writes a series of articles for a certain magazine. Then he wishes to have these articles appear in book form. Can he reproduce the type-matter from the magazine by means of photography or photo-offset, without paying a fee to the magazine whose pages he photographs? With the future developments of offset, this may become a real problem. It has occurred in my experience once, and nobody seemed to know what the 'rights' really were.*

There is no copyright on type. Probably the producer-owner of a book would be able to protect its physical make-up through state laws relating to unfair competition or fair trade. However, this is a matter for state courts, not the copyright law.

### UNPUBLISHED WORKS

*I think one of the most frequent queries put to us is whether or not it is possible to copyright a work before it is published; that is, authors want to be sure that nobody kidnaps their brain children while they are still young.*

If the work is a 'book'—any literary opus intended for publication with the exception of dramas, lectures, sermons, radio scripts—it cannot be copyrighted before it is published. Publication means reproduction in copies for public sale or distribution. Before publication it will be protected at common law. A professor who has his syllabus multigraphed and sells it in the college co-op has published it, and let's hope he had a copyright notice on it. If he did not, he has dedicated it to the public.

# Forms

IN THE ARTICLE on Applications (see page 43) are listed the forms available at the Copyright Office. In general, the same information is requested on all forms: the name of the copyright owner, his address, the author's name and citizenship, the title of the work, the dates of publication and of any earlier registration or publication, and the name and address of the person to whom the registration should be sent and the person sending the fee. However, there are often slight variations. For this reason, in the section that follows are reproductions of all those forms that are most frequently used by the literary author or publisher, filled in as typical registrations.

Throughout the text the reader has been advised of common pitfalls in registering material for copyright. By studying the forms themselves he will see exactly how registration should be made. It may be worth while once more to point out:

The copyright owner is not necessarily the author.

The publisher is not necessarily the copyright owner.

The translator is the author of a translation.

The citizenship of the author must be known before registration can be made.

The place of residence of a foreign author living in the United States must be given.

The date of the foreign publication of an American edition must be given, as well as the American publication date.

All application forms must be filled out *in full*, even if the same name and address has to be repeated several times.

In the works selected for sample registrations, many different problems have been exemplified: the use of a *nom de plume*, co-authors, the stateless author, an American edition of a book on which no ad interim copyright had been registered, and so on. While the wording of the entries as shown has in every case been accepted by the Copyright Office, it is not necessarily the only acceptable phraseology. If additional information (of special circumstances) seems to be pertinent, it should be given in an accompanying letter, not written in the margins or between the lines of the form itself.

**APPLICATION FOR REGISTRATION  
OF AMERICAN EDITION OF AD INTERIM BOOK**

A

*REGISTER OF COPYRIGHTS, Washington, D. C.*

REGISTER OF COPYRIGHTS, Washington, D. C.  
Of the BOOK named herein TWO complete copies of the best edition PUBLISHED on the date  
stated herein are deposited, accompanied by the AFFIDAVIT required by section 16 of the Act of March  
4, 1909, to secure extension of the copyright in such book for the full term in accordance with the provisions  
of section 22 of said Act. \$2 (statutory fee for registration and certificate) is also enclosed. The copy-  
right is claimed by

(1) Name of copyright owner Dash Book Company (Write full legal name of copyright owner)  
(2) Address 200 Blank Street (Street) New York 3 (City) New York (State)  
(3) Name of author or translator John Smith  
(4) Country of which the author is a citizen \* Great Britain (Must be stated)  
(5) Title of book Tales of Heroism

16-5854

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

- |   |            |                |                                    |
|---|------------|----------------|------------------------------------|
| (6) Original edition published abroad on the  | 10         | day of July    | , 1945                             |
| (7) American edition published on the   | 20         | day of October | , 1945                             |
| (State here the day, month, and year when the work was placed on sale, sold, or publicly distributed. Must agree with the date stated in the affidavit on reverse side) |            |                |                                    |
| (8) Send certificate of registration to Henry Green, Editor, Dash Books   |            |                |                                    |
| 200 Blank Street  | New York 3 | New York       |                                    |
| (Street)  | (City)     | (State)        |                                    |
| (9) Name and address of person sending the fee Henry Green, Editor, Dash Books  |            |                |                                    |
| 200 Blank Street  | New York 3 | New York       |                                    |
| (Street)  | (City)     | (State)        | FILL OUT AFFIDAVIT ON REVERSE SIDE |

\* If the work is a translation, state name and citizenship  
of the translator in lieu of that of the author.

WORLD BANK

(9) Name and address of person sending the fee Henry Green, Editor, Dash Books  
200 Blank Street New York 3 New York  
(City) (State) FILL OUT AFFIDAVIT ON REVERSE SIDE

\* If the work is a translation, state name and citizenship  
of the translator in lieu of that of the author.

FILL OUT AFFIDAVIT ON REVERSE SIDE

(State) **FILE COPY AFFIDAVIT ON**  
of the translator in lieu of that of the author.

Affidavit on opposite side (see p. 208)

Use this when Form A4 (p. 205) has previously been filed. Be sure that the name given on line (1) agrees with the name actually given in the notice in the book.

**APPLICATION FOR REGISTRATION**

A1

BOOK NOW FIRST PUBLISHED IN THE UNITED STATES

*REGISTER OF COPYRIGHTS, Washington, D. C.*

Of the BOOK named herein TWO complete copies of the best edition FIRST PUBLISHED on the date stated herein are herewith deposited to secure copyright registration, accompanied by the AFFIDAVIT required by section 18 of the Act of March 4, 1909, that the book has been produced in accordance with the manufacturing provisions specified in section 15 of the said Act. \$2 (statutory fee for registration and certificate) is also enclosed. The copyright is claimed by

(1) Name of copyright owner Dash Book Company, Inc.  
(Write full legal name of copyright owner)

(2) Address 200 Blank Street (Street) New York 3 (City) New York (State)

(3) Name of author or translator James N. Doe

(4) Country of which the author is a citizen \* Great Britain  
(Must be stated)

(5) If an alien author domiciled in the United States, state where .....

(6) Title of book ..... English Landslides

(6a) Original edition published in England 2 March 1944

36-5654

A1	2 c. rec'd _____ Application rec'd _____ Affidavit rec'd _____
Fee rec'd, \$ _____	

**IMPORTANT.**—Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**IMPORTANT** — An applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

in the United States

(7) First published on the 6 day of December, 1944;  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed. Must agree  
with the date stated in the affidavit on reverse side)

(8) Send certificate of registration to Henry Green, Editor, Dash Books.

200 Blank Street New York 3 New York  
(Street) (City) (State)

(9) Name and address of person or firm sending the fee Dash Book Company, Inc.

200 Blank Street New York 3  
(Street) (City) New York  
(State)  **FILL OUT AFFIDAVIT ON REVERSE SIDE**

\* If the work is a translation, state name and citizenship

**New York** .....  
(State) FILL OUT AFFIDAVIT ON REVERSE SIDE  
of the translator in lieu of that of the author.

Use this to register the American edition of a book in English first published abroad, on which no ad interim copyright has been secured. Type in the date of the foreign publication under line (6). Affidavit on verso must be filed (see p. 208). If copyright is retained by the author and is so given in the notice, the author's name should be given on line (1).

## APPLICATION FOR REGISTRATION

A1

## BOOK NOW FIRST PUBLISHED IN THE UNITED STATES

## REGISTER OF COPYRIGHTS, Washington, D. C.

Of the BOOK named herein TWO complete copies of the best edition FIRST PUBLISHED on the date stated herein are herewith deposited to secure copyright registration, accompanied by the AFFIDAVIT required by section 16 of the Act of March 4, 1909, that the book has been produced in accordance with the manufacturing provisions specified in section 15 of the said Act. \$2 (statutory fee for registration and certificate) is also enclosed. The copyright is claimed by

- (1) Name of copyright owner Dash Book Company, Inc.  
(Write full legal name of copyright owner)
- (2) Address 200 Blank Street  
(Street) New York 3  
(City) New York  
(State)
- (3) Name of ~~author or~~ translator George R. Burns
- (4) Country of which the author is a citizen \* United States  
(Must be stated)
- (5) If an alien author domiciled in the United States, state where \_\_\_\_\_
- (6) Title of book Thirty Tales, by Jean Voisin (original author)

16-5654

A1	
_____	Application rec'd.....
_____	Affidavit rec'd.....
\$2 Fee rec'd.....	2 c. rec'd.....
IMPORTANT. Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.	

- (7) First published on the 15th day of June, 1944.  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed. Must agree with the date stated in the affidavit on reverse side)
- (8) Send certificate of registration to Henry Green, Editor, Dash Books  
200 Blank Street New York 3 New York  
(Street) (City) (State)
- (9) Name and address of person or firm sending the fee Dash Book Company, Inc.

200 Blank Street New York 3 New York  
(Street) (City) (State)

\* If the work is a translation, state name and citizenship

FILL OUT AFFIDAVIT ON REVERSE SIDE  
 of the translator in lieu of that of the author.

Affidavit form on back (see p. 208) must be filed. If a translation, as in example given, name of original author must be given on title line (6).

## APPLICATION FOR REGISTRATION

A2

## REISSUED BOOK PUBLISHED IN THE UNITED STATES

## REGISTER OF COPYRIGHTS, Washington, D. C.

Of the BOOK named herein, TWO complete copies of a new issue published on the date stated herein are herewith deposited to secure copyright registration, accompanied by the AFFIDAVIT required by section 16 of the Act of March 4, 1909, that the book has been produced in accordance with the manufacturing provisions specified in section 15 of the said Act. \$2 (statutory fee for registration and certificate) is also enclosed. In the reissued work copyright is claimed on the new matter as follows:

Divers additions to text, 30 pp. New Appendix, New Intro. & Index  
(State what the new copyright matter is)

(1) Name of copyright owner Dash Book Company  
(Write full legal name of copyright owner)

(2) Address 200 Blank Street New York New York  
(Street) (City) (State)

(3) Name of author of new copyright matter Jacques Du Vert  
(Write name in full)

(4) Country of which author is a citizen\* France  
(Must be stated)

(5) If an alien author domiciled in the United States, state where 20 Burke Place, N.Y.C.

(6) Title of book New Laws of Social Reform

16-50524

A2	2 c. rec'd.....
	Application rec'd.....
	Affidavit rec'd.....
Fee rec'd, \$ .....	.....

IMPORTANT.—Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

(7) The reissued work was published on the 19 day of September, 1945.  
(State day, month, and year when reissued work was placed on sale, sold, or publicly distributed. Must agree with the date in the affidavit if stated therein)

(8) Send certificate of registration to Dash Book Company

200 Blank Street New York New York  
(Street) (City) (State)

(9) Name and address of person or firm sending the fee Dash Book Company

200 Blank Street New York New York  
(Street) (City) (State)

\* If the work is a translation, state name and citizenship

FILL OUT AFFIDAVIT ON REVERSE SIDE  
of the translator, in lieu of that of the author of original.

Affidavit on back (see p. 208) must be filed. This form to be used for new copyright material added to any literary work previously copyrighted or in the public domain. Notice that the material on which the new copyright is to be secured must be stated. On line (5) the street address of an alien author may be given, but is not required. The city (and usually state) must be given.

1 c. rec'd \_\_\_\_\_

Application  
rec'd \_\_\_\_\_

Fee rec'd \$ \_\_\_\_\_

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office**APPLICATION FOR REGISTRATION OF BOOK BY A FOREIGN AUTHOR IN FOREIGN LANGUAGE PUBLISHED ABROAD WITH NOTICE OF UNITED STATES COPYRIGHT****REGISTER OF COPYRIGHTS, Washington, D. C.**

Of the BOOK named herein, ONE copy of the best edition published with the required notice (see below) is deposited to secure registration of the claim of copyright according to the provisions of the Act of March 4, 1909, as amended by the Act of March 28, 1914. The statutory fee of \$2 is also inclosed. The copyright is claimed by

(1) Name of copyright owner Henri Castille (Write full legal name of copyright owner)(2) Address 20 Rue de la Porte (Street) Paris (City) France (Country)

\* The notice should contain the word "Copyright" followed by year date of publication and name of copyright owner, and be printed on the title-page or  
 [Please turn this over]

(3) Name of author or translator Jean Voisin (Write name in full)(4) Country of which the author or translator is a citizen\* France (MUST be stated)(5) Title of book Trente Contes (Inside title-page)(6) Published by Henri Castille et Cie at Paris, France(7) First published on the 2 day of August, 1945  
 (State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)(8) Send certificate of registration to John Doe, Publishers Agent  
30 Plaza Square (Street) Philadelphia (City) United States (Country)(9) Name and address of person or firm sending the fee John Doe, Publishers Agent  
30 Plaza Square (Street) Philadelphia (City) United States (Country)

\* If the work is a translation, state name and citizenship of the translator, in lieu of the author of original.  
 (July, 1939—5,000) U S GOVERNMENT PRINTING OFFICE [Please turn this over]

No affidavit is required. In registering the foreign language translation of an American book, the translator's name, not the United States author's, should be given on line (3). This registration is invalid unless the foreign edition bears a notice of United States copyright.

1 c. rec'd

Application  
rec'd

Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR AD INTERIM REGISTRATION  
BOOK IN ENGLISH LANGUAGE FIRST PUBLISHED ABROAD**

**REGISTER OF COPYRIGHTS, Washington, D. C.**

*Of the BOOK named herein, one complete copy of the best edition published on the date stated herein is hereby deposited to secure ad interim copyright according to section 21 of the Act of March 4, 1909, as amended on December 18, 1919. \$2 (statutory fee for registration) is also inclosed. The copyright is claimed by*

(1) Name of copyright owner John Smith (Write full legal name of copyright owner)

(2) Address 200 Side Street  London England  
(Street) (City) (State or Country)  
[Please turn this over]

(3) Name of author or translator John Smith (Write name in full)

(4) Country of which the author is a citizen\*  Great Britain (MUST be stated)

(5) If alien author domiciled in the United States, state where \_\_\_\_\_

(6) Title of book Tales of Heroism (Inside title-page)  
published in The Standard Weekly, Vol. XLVI, No. 8  
(If published in a periodical, send ONE COPY of the issue and state here the title, volume and number)

(7) Published by Publishers Ltd. at London, England

(8) Published abroad on the 10 day of July, 1945  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

(9) Send certificate of registration to Henry Green, Editor, Dash Book Company  
200 Blank Street New York 3 New York  
(Street) (City) (State or Country)

(10) Name and address of person or firm sending the fee Dash Book Company  
200 Blank Street New York 3 New York  
(Street) (City) (State or Country)

\*If the work is a translation, state name and citizenship of the translator, in lieu of that of the author.  
(July, 1941—5,000) U S GOVERNMENT PRINTING OFFICE [Please turn this over]

In normal circumstances, this form should be filed within 60 days of the original foreign publication date (but see p. 35). No affidavit is required. If the publisher is to hold the copyright, his name, and not the author's, should be given on line (1). See Form A, page 200, for registration of American edition of this book. The copyright has been assigned to the American publisher.

A5

1 c. rec'd.

Application  
rec'd \_\_\_\_\_

Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR REGISTRATION  
CONTRIBUTION TO A NEWSPAPER OR PERIODICAL**

REGISTER OF COPYRIGHTS, Washington, D. C.

*One complete copy of the newspaper or periodical named herein and published in the United States on the date stated below is herewith deposited to secure copyright registration under the provisions of the Act of March 4, 1909, for the CONTRIBUTION contained therein as described herein. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by*

Robert T. Gross

(1) Name of copyright owner ROBERT F. GROSS (Write full legal name of copyright owner)

(2) Address 200 Grassy Place Greenport Minnesota  
(Street) (City) (State)

(3) Name of author or translator Robert T. Gross (Please turn this over)

(4) Country of which the author is a citizen  United States  
(MUST be stated)

(5) If an alien author domiciled in the United States, state where

(6) Description of contribution  BOOK  PRINT  DRAMA  MAP  MUSIC  
(Check thus 1 the one that applies; see below \*)  
POTTERY, FOLK TALES, INTRUSIVES

(7) Title of contribution POEMS FOR WAR WIVES on page 18

(8) Published in Literary Tales; at St. Paul; Minnesota;

(Name of periodical) (City) (State)  
on the 28 day of August, 1945  
(State here exact date when the issue was first placed on sale or distributed)

(9) Send certificate of registration to Robert T. Gross

200 Grassy Place Greenport Minnesota

(10) Name and address of person or firm sending the fee Literary Tales, Inc.

295 L Street St. Paul Minnesota

\* If literary text matter, describe as a "book"; if a drama, as a "dramatic composition"; if music, as a "musical composition"; if a print, as a "print" or "pictorial illustration", etc.

(July, 1939—75,000) U. S. GOVERNMENT PRINTING OFFICE [Please turn this over]

This form may be used only if the contribution to the magazine or newspaper bears a separate copyright notice. Although it is an 'A' form, contributions of any other classification (except KK, advertisements) are registered on it. Be sure to send a complete copy of the periodical for deposit, and to check the proper classification in line (6). No affidavit is required.

APPLICATION FOR REGISTRATION A6  
SERIAL REPUBLISHED (WITH NEW MATTER) IN BOOK FORM

REGISTER OF COPYRIGHTS, Washington, D. C.

*Of the BOOK named herein TWO complete copies of the best edition are deposited to secure copyright registration, accompanied by the AFFIDAVIT required by section 16 of the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed on new work of authorship.*

- (1) Name of copyright owner Doris Doe (Doris Doe Brown)  
(Write full legal name of copyright owner)
- (2) Address 24 Naught Street (Street) New York (City) New York (State)
- (3) Title of work Rachel's Tears
- (4) Nature of new matter Changes, revisions and additions for full length book version
- (5) Name of author Doris Doe; and Helen Roe (illustrator)
- (6) Citizenship of author both United States
- (7) First published serially in Women's Journal beginning with  
(Insert name of periodical)  
 the issue of January, 1944, and ending with the issue of July, 1944

A6

2 c. rec'd
Application rec'd
Affidavit rec'd

Fee rec'd \$

IMPORTANT. Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

(8) Republished in book form on 25 day of August, 1944

(9) Send certificate of registration to Dash Book Company

200 Blank Street New York 3 New York  
(Street) (City) (State)

(10) Name and address of person or firm sending the fee Dash Book Company

200 Blank Street New York 3 New York  
(Street) (City) (State)  
 (July, 1939 - \$5,000) U. S. GOVERNMENT PRINTING OFFICE

[Please turn this over]

Affidavit (see p. 208) required. If no new material is added for the book version, do not make a second registration. If only a few chapters of the book were previously published in a magazine—i.e. if it was not strictly speaking a 'serial' publication—do not use this form but use A1. If a novel or book is expanded from a single short story or article previously registered on A4, use A2.

**AFFIDAVIT**

IMPORTANT.—The executive facts stated therein, of a corporation or

tion of this affidavit must be SUBSEQUENT to and must be made by an INDIVIDUAL (an officer may act)

State of New York }  
County of New York } ss:

(Of the numbered statements, check thus ✓ the one that applies. Failure to do so will cause delay.)

I, Fred Marks

{ being duly sworn, deposed  
do solemnly affirm }

and say: That I am the {  
 (1) person claiming copyright in  
 (2) duly authorized agent or representative residing  
 in the United States of the claimant of copy-  
 right in  
 (3) printer of } the book entitled:

Thirty Tales

that said book has been printed in the United States by \_\_\_\_\_

Dutone Lithographers

(Name of establishment)

at Newark New Jersey  (1) from type set (or plates made  
(City) (State)

in the United States from type set) within the limits of the United States, or  (2) by lithographic, photo-engraving, or  (3) other process wholly performed within the limits of the United States by \_\_\_\_\_

Dutone Lithographers

(Name of establishment; repeat if same as printer)

at Newark New Jersey, \*that the printing of the text  
(City) (State)

of the said book was completed on the 29th day of May, 1944;  
that the said book WAS PUBLISHED on the 15th day of June, 1944;  
that the binding of the said book has been performed within the limits of the United States by

Jansen Bindery

(Name of establishment)

at Newark New Jersey   
(City) (State)

Fred Marks

(Signature of person making affidavit)

Subscribed and /sworn to } before me this 19th day of June, 1944  
(affirmed )

NOTARIAL SEAL  
(Copyright law makes use of  
official seal obligatory)

John Public

(Signature of Notary Public)

\*Sec. 16 of the Act provides that the completion of the printing, or (2) the

affidavit shall state either (1) the date of date of publication. (Mar. 1944—75,000)

Affidavit form to be filed with A, A1, A2, and A6. Be sure to check (1), (2), or (3) of the opening, whichever applies. The affidavit must be signed by the person so signified at its opening. Although date of the completion of the printing may be given as well as the publication date, it is not required (see footnote on Form). Check (1), (2), or (3), indicating whether the work was printed from type or plates, lithographed or photographed, or reproduced by some other process.

Application  
rec'd \_\_\_\_\_

2 c. rec'd \_\_\_\_\_

Fee rec'd. \$2.00

**IMPORTANT** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR REGISTRATION  
PERIODICAL PUBLISHED IN UNITED STATES**

**REGISTER OF COPYRIGHTS, Washington, D. C.**

*Of the PERIODICAL named herein, TWO complete copies of the best edition published in the United States on the date stated herein are herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. The periodical has been produced in accordance with the manufacturing provisions specified in section 15 of the said Act. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by*

(1) Name of copyright owner Smith Publishing Company

(Write full

legal name of copyright owner)

(2) Address 90 Westoner Square  Philadelphia, Pennsylvania

(Street)

(City)

(State)

[Please turn this over]

(3) Title of periodical TALES FOR TODDLERS(4) Published at Philadelphia Vol. XX No. 2 Date of issue 1 June 1945

(City)

(5) By whom and where printed Lithographic Expert CompanyJersey City, New Jersey(6) This number published on the 20 day of May, 1945  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)(7) Send certificate of registration to L. D. Smith90 Westoner Square  
(Street)Philadelphia  
(City)Pennsylvania  
(State)(8) Name and address of person or firm sending the fee Smith Publishing Company90 Westoner Square  
(Street)Philadelphia  
(City)Pennsylvania  
(State)

(Aug., 1942—50,000)

U. S GOVERNMENT PRINTING OFFICE

[Please turn this over]

No affidavit required. Be sure that on line (1) the name of the copyright owner as given corresponds with the owner given in the notice—i.e. is not just the name of the magazine. Every issue must be registered on or after the day of publication (issuance to the public), not before. Thus the date of the issue on line (4) is usually later than the actual date of publication given on line (6).

C

1 c. rec'd

Application  
rec'd \_\_\_\_\_

Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR REGISTRATION  
LECTURE, SERMON, OR ADDRESS PREPARED FOR ORAL DELIVERY**

*REGISTER OF COPYRIGHTS, Washington, D. C.*

Of the LECTURE, SERMON, or ADDRESS named herein, ONE complete copy is herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. \$1 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by

(1) Name of copyright owner John M. Doe  
(Write full legal name of copyright owner)

(2) Address 299 S. Blank Street Oakfalls New York

(3) Name of author John M. Doe

(Write name in full)

(4) Country of which the author is a citizen United States  
(MUST be stated)

(5) If an alien author domiciled in the United States, state where \_\_\_\_\_

(6) Title of work BOOKS FOR YOUNG READERS (Lecture -- Radio Script)

(7) Send certificate of registration to John M. Doe

299 S. Blank Street Oakfalls New York  
*(Street) (City) (State)*

(8) Name and address of person or firm sending the fee GTR Broadcasting Company

**562 T Street** **New York** **New York**  
**(Street)** **(City)** **(State)**  
**(July, 1939—20,000)** **U. S. GOVERNMENT PRINTING OFFICE** **[Please turn this over]**

Use this only for unpublished, nondramatic, works prepared for oral delivery. If a radio script is a play, it should be registered on D2, not on C.

2 c. rec'd  
Application  
rec'd

Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

## APPLICATION FOR REGISTRATION PUBLISHED DRAMATIC COMPOSITION

*REGISTER OF COPYRIGHTS, Washington, D. C.*

*Of the DRAMATIC COMPOSITION named herein, TWO complete copies of the best edition published in the United States on the date stated herein are herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by*

(1) Name of copyright owner Mary Ann Smith  
(Write full legal name of copyright owner)

(2) Address 1842 Clyde Avenue  
(Street) Oakland (City) California (State)

(3) Name of author or translator Mary Ann Smith and John Gray  
(Write name in full) [Please turn this over]

(4) Country of which the author is a citizen\* Smith, U.S.;\*Gray, Great Britain  
(MUST be stated)

(5) If an alien author domiciled in the United  Yes, state where \*Berkeley, California

(6) Title of drama The Curtain Falls

(Registered as unpublished drama 'The Last Act' - D unpub.90103)

(7) Published on the 20th day of June, 1945  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

(8) If heretofore registered as unpublished, give date January 10, 1940

(9) Send certificate of registration to Dash Book Company

200 Blank Street New York 3 New York  
(Street) (City) (State)

(10) Name and address of person or firm sending the fee Henry Green, Editor, Dash  
Book Company

200 Blank Street New York New York  
(Street) (City) (State)

\* If the work is a translation, state name and citizenship of the translator, in lieu of that of the author.

(July, 1941—5,000) U. S. GOVERNMENT PRINTING OFFICE [Please turn this over]

Use only for a published drama—public presentation is not publication. If it has previously been registered as an unpublished drama, the date, registration number, and any former title should be given on lines (6)-(7).

Form D2 for unpublished dramas is the same as D1 except that lines (7) and (8), publication date and previous registration date, are omitted.

D3

2 c. rec'd.  
Application  
rec'd.

Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

## APPLICATION FOR REGISTRATION DRAMATICO-MUSICAL COMPOSITION PUBLISHED IN THE U. S.

*REGISTER OF COPYRIGHTS, Washington, D. C.*

*Of the DRAMATICO-MUSICAL COMPOSITION named herein, TWO complete copies of the best edition published in the United States on the date stated herein are herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by*

(1) Name of copyright owner The Players Workshop, Inc.  
(Write full legal name of copyright owner)

(2) Address 20 E. 9 Street New York New York  
(Street) (City) (State)

(3) Name of author of words Elizabeth Gray  
(Write name in full) [Please turn this over]

(4) Country of which the author is a citizen\* United States

(5) If an alien author domiciled United States (MUST be stated)  
in the United States, state where

(6) Name of composer of music William Gray

(7) Country of which the composer is a citizen United States (MUST be stated)

(8) If an alien composer domiciled in the United States, state where

(9) Title of dramatico-musical work Epithalamium in C

(10) Published on the 12 day of January, 19 45  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

(11) Send certificate of registration to Peter Smith  
20 E. 9 Street New York New York  
(Street) (City) (State)

(12) Name and address of person or firm sending the fee The Players Workshop, Inc.  
20 E. 9 Street New York New York  
(Street) (City) (State)

\* If the work is a translation, state name and citizenship of the translator, in lieu of that of the author.  
(July 1939—3,000) U. S. GOVERNMENT PRINTING OFFICE [Please turn this over]

If one collaborating author wished to hold the copyright in trust for both, the name of that one, as given in the notice, should be entered on line (1). Give the name and nationality of both lyricist and composer.

Form D4 is the same as D3 except that publication date is not requested.

COPIES TO LIBRARY OF CONGRESS

E

Fee rec'd \$2.00.

Application  
rec'd \_\_\_\_\_

2 c. rec'd \_\_\_\_\_

IMPORTANT. Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

APPLICATION FOR REGISTRATION  
MUSICAL COMPOSITION PUBLISHED IN THE U. S.

REGISTER OF COPYRIGHTS, Washington, D. C.

Of the MUSICAL COMPOSITION named herein, TWO complete copies of the best edition first published in the United States on the date stated herein are herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by \_\_\_\_\_

(1) Name of copyright owner Right Musical Publishers  
(Write full legal name of copyright owner)  
(2) Address 942 X Street Denver Colorado  
(Street) (City) (State)  
(3) Name of composer John N. Doe (Write name in full)  (Please turn this over)

USE THIS BLANK ONLY FOR NEW MUSIC NOW FIRST PUBLISHED.

(4) Country of which the composer is a citizen  stateless (formerly of Austria)  
(MUST be stated)  
(5) If an alien composer domiciled in the United States, state where Boulder, Colorado  
(6) Author of words Jane S. Roe  
(Write name in full)  
(7) Title and instrumentation of musical composition Lullaby  
voice and piano

(8) Published on the 2 day of July, 1945  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

(9) If heretofore registered as unpublished, give date 21 August 1943

(10) Send certificate of registration to Henry Smith, Pres., Right Musical Publisher  
942 X Street Denver Colorado  
(Street) (City) (State)

(11) Name and address of person or firm sending the fee Right Musical Publisher  
942 X Street Denver Colorado  
(Street) (City) (State)

(Sept. 1943-23,000)

U. S. GOVERNMENT PRINTING OFFICE

[Please turn this over]

Copyright by Jane S. Roe, assigned to Right Musical Pub. July 1, 1945

Line (4) shows the proper registration of a 'stateless' author; notice of record of assignment is typed in as footnote.



F

2 c. rec'd

Application  
rec'd

Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.**APPLICATION FOR REGISTRATION—PUBLISHED MAP****REGISTER OF COPYRIGHTS, Washington, D. C.**

Of the MAP named herein, TWO complete copies of the best edition published on the date stated herein are herewith deposited to secure copyright registration according to the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by

(1) Name of copyright owner Dash Book Company  
 (Write full legal name of copyright owner)

(2) Address 200 Blank Street  
 (Street) New York 3 (City) New York (State)

(3) Name of the author of the map anon.  (various staff artists)  
 (Write name in full) [Please turn this over]

(4) Country of which the author  
 of the map is a citizen  United States  
 (MUST be stated)

5) If an alien author domiciled in the United States, state where \_\_\_\_\_

(6) Title of map A Pictorial Map of Old Virginia

7) Published on the 18 day of October, 1945  
 (State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

8) Send certificate of registration to Henry Green, Editor, Dash Book Company  
200 Blank Street New York 3 New York  
 (Street) (City) (State)

9) Name and address of person or firm sending the fee Henry Green, Dash Book Company  
200 Blank Street New York 3 New York  
 (Street) (City) (State)  
 (July, 1940—10,000) U. S. GOVERNMENT PRINTING OFFICE [Please turn this over]

Maps may be copyrighted only after publication. Note that the publisher  
 is the real owner (i.e. author) if the map is done by staff artists 'for hire.'

Photo., etc., rec'd \_\_\_\_\_  
 Application  
rec'd \_\_\_\_\_  
 \_\_\_\_\_

Fee rec'd \$

**IMPORTANT** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR COPYRIGHT REGISTRATION OF A WORK OF ART  
(PAINTING, DRAWING, OR SCULPTURE); OR FOR MODEL OR DESIGN  
FOR A WORK OF ART. NOT REPRODUCED IN COPIES FOR SALE.**

*REGISTER OF COPYRIGHTS, Washington, D. C.*

(1) Of the Sculpture

(State whether Painting, Drawing, Sculpture, Model or Design for a Work of Art)  
*named herein a photograph or other identifying reproduction thereof is herewith deposited to secure  
 copyright registration according to the provisions of the Act of March 4, 1909. \$1 (statutory fee for  
 registration and certificate) is also inclosed. The copyright is claimed by*

(2) Name of copyright owner Peter Smith (Write full legal name of copyright owner)  
 (3) Address Route 2  Hillsdale New York  
 (Street) (City) (State)

[Please turn this over]

(4) Name of painter, sculptor, or other artist  Peter Smith (Write name in full)  
 (5) Country of which the artist is a citizen United States (MUST be stated)  
 (6) If an alien artist domiciled in the United States, state where \_\_\_\_\_  
 (7) Title or brief description of work 'Bonzo' -- sleeping dog carved  
in apple wood

(8) Send certificate of registration to Peter Smith  
Route 2 Hillsdale New York  
 (Street) (City) (State)  
 (9) Name and address of person or firm sending the fee R. Evans, Artists' Agent  
Ludlow Building New York New York  
 (Street) (City) (State)  
 (July, 1941--10,000) U. S. GOVERNMENT PRINTING OFFICE [Please turn this over]

Note that a photograph or other identifying reproduction must be sent with the application, and that the work to be registered must have a title or description, line (7).

Forms G \* and G1 are the same as G2 except that publication date is requested, and on the latter the date of any previous registration.

H

2 c. rec'd \_\_\_\_\_

Application  
rec'd \_\_\_\_\_

Fee rec'd \$ \_\_\_\_\_

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR REGISTRATION  
REPRODUCTION OF A WORK OF ART**

**REGISTER OF COPYRIGHTS, Washington, D. C.**

*Of the REPRODUCTION OF A WORK OF ART named herein, TWO complete copies of the best edition published on the date stated herein are hereby deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by*

(1) Name of copyright owner Norene Brown

(Write full legal name of copyright owner)

(2) Address 29 West Street  Otisville North Carolina  
 (Street) (City) (State)

{Please turn this over}

(3) Citizenship of author of reproduction  United States  
 (Must be stated)

(4) Author of original work Josef Vroe

(5) Title of reproduction Vroe's 'Spring' in Tempera

(6) Published on the 30 day of June, 1946  
 (State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

(7) Send certificate of registration to Norene Brown

29 West Street Otisville North Carolina  
 (Street) (City) (State)

(8) Name and address of person or firm sending the fee Atlee Atheneum

Civic Square Otisville North Carolina  
 (Street) (City) (State)  
 (July, 1939--5,000) U. S. GOVERNMENT PRINTING OFFICE {Please turn this over}

In this case the original work may still be in copyright (if so, the author of the reproduction must have permission to work from it) or may be in the public domain. The original author's name must be given on line (4). Author here usually means artist or sculptor.

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*Form I1*

APPLICATION FOR REGISTRATION  
FOR PUBLISHED DRAWING OR PLASTIC WORK OF A  
SCIENTIFIC OR TECHNICAL CHARACTER

Deposit 2 copies, fee \$2.

Form is like D1 (p. 211) except that it must be indicated in the opening sentence whether the material is a drawing or a plastic work.

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*Form I2*

APPLICATION FOR REGISTRATION  
UNPUBLISHED DRAWING OR PLASTIC WORK OF A  
SCIENTIFIC OR TECHNICAL CHARACTER

Deposit photograph or other identifying reproduction, fee \$1.  
Form is like G2 (p. 216).

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*Form J1*

APPLICATION FOR REGISTRATION  
PHOTOGRAPH REPRODUCED IN COPIES FOR SALE

Deposit 2 copies, fee \$2 if certificate is desired, \$1 if no certificate.  
Form is like F (p. 215).

---

*Form J2*

APPLICATION FOR REGISTRATION  
PHOTOGRAPH NOT REPRODUCED FOR SALE

Deposit 1 copy, fee \$1.  
Form is like G2 (p. 216).

---

K

Application  
rec'd

2 c. rec'd

Fee rec'd. \$2.

IMPORTANT. Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR REGISTRATION  
PRINT OR PICTORIAL ILLUSTRATION PUBLISHED IN THE U. S.**

*REGISTER OF COPYRIGHTS, Washington, D. C.*

*Of the PRINT OR PICTORIAL ILLUSTRATION named herein, TWO complete copies of the best edition first published in the United States on the date stated herein are herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909. \$2 (statutory fee for registration and certificate) is also inclosed. The copyright is claimed by*

(1) Name of copyright owner Blank Publishing Company  
(Write full legal name of copyright owner)

(2) Address 200 Blank Street  New York 3 New York  
(Street) (City) (State)

(3) Name of author of print John Public  
(Write name in full)  [Please turn this over]

(4) Country of which the author of  
the print is a citizen  United States  
(MUST be stated)

(5) If an alien author domiciled in the United States, state where

(6) Title of print Flags of all Nations

(7) Lithographed or photo-engraved or otherwise produced in the United States by  
Jones Lithographers at New York New York  
(Name of establishment) (City) (State)

(8) Published on the 20 day of December, 1945  
(State here the day, month, and year when the work was placed on sale, sold, or publicly distributed)

(9) Send certificate of registration to Blank Publishing Company  
200 Blank Street New York 3 New York  
(Street) (City) (State)

(10) Name and address of person or firm sending the fee Blank Publishing Company  
200 Blank Street New York 3 New York  
(Street) (City) (State)  
(Oct. 1943—10,000) U. S. GOVERNMENT PRINTING OFFICE  [Please turn this over]

No affidavit is required but note that the name of the lithographer or photo-engraver must be given.

KK

2 c. rec'd

**Application  
rec'd**

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

**APPLICATION FOR REGISTRATION  
PRINT OR LABEL USED FOR ARTICLE OF MERCHANDISE**

REGISTER OF COPYRIGHTS, Washington, D. C.

REGISTER OF COPYRIGHTS, WASHINGTON, D. C.  
Of the  PRINT OR  LABEL USED FOR AN ARTICLE OR ARTICLES OF MERCANDISE\*, TWO complete copies of the best edition which has been published with the prescribed notice of copyright on the date stated herein are herewith deposited to secure copyright registration according to the provisions of the Act of March 4, 1909, as amended by the Act of July 31, 1939. \$6 (statutorily fee for registration and certificate) is also inclosed. The copyright is claimed by

(1) Name of copyright proprietor	Dash Book Company	
	(Write full legal name)	
(2) Address	200 Blank Street	New York 3 New York
	(Street)	(City) (State)
(3) Name of author**	Dash	Book Company
	(Write name in full) [Please turn this over]	

(4) Country of which the author  
is a citizen  United States  
(MUST be stated)

(5) If an alien author domiciled in the United States, state where \_\_\_\_\_

(6) Title on Print Label 'Close Quotes' (Label on container)

(7) Nature of merchandise A card same of quotations

(8) Printed by Jones Lithographers

at New York      New York

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(Name of establishment)	(City)	(State)
-------------------------	--------	---------

(9) Published on the 3 day of October, 1945  
(State here the day, month, and year)

(10) Send certificate of registration to Dash Book Company

200 Blank Street      New York 3      New York  
(Street)                (City)                (State)

(11) Name and address of person or firm sending the fee Dash Book Company

(11) Name and address of person or firm sending the record  
200 Blank Street New York 3 New York

An advertising circular of eight pages or less (one sheet folded four ways) must be registered on this form, not as a book. In the example given here the author is the 'employer for hire' since the work was done by a staff member or hired and bought outright as a special job.

L2	Application rec'd _____
	Title rec'd _____
	Description rec'd _____
	Prints rec'd _____

.Fee rec'd \$

**IMPORTANT.** Applicant must not write in the blank lines above; to do so will cause delay in Copyright Office.

## APPLICATION FOR COPYRIGHT FOR MOTION PICTURE PHOTOPLAY NOT REPRODUCED FOR SALE (IF THE WORK IS A MOTION-PICTURE BUT NOT A PHOTOPLAY, USE APPLICATION FORM M2)

**REGISTER OF COPYRIGHTS, Washington, D. C.** Date \_\_\_\_\_  
 Of the MOTION-PICTURE PHOTOPLAY named herein and NOT REPRODUCED FOR SALE,  
 the following are herewith deposited to secure copyright registration in full compliance with the provisions of the Act of August 24, 1912: 1st, The Title; 2d, A Description of the photoplay; 3d, (1) 10 Prints taken ONE FROM EACH SCENE OF EVERY ACT. \$1 (statutory fee for registration and certificate) is also inclosed. (STATE IN SPACE 1 EXACT NUMBER OF PRINTS) The copyright is claimed by \_\_\_\_\_

(2) Name of copyright owner Drama Prep. School  
 (Write full name of copyright owner) \_\_\_\_\_  
 (3) Address San Diego California  
 (Street) (City) (State) [Please turn this over]

(4) Name of author of the motion picture Vee Toner  
 (Write name in full) \_\_\_\_\_  
 (5) Country of which the author is a citizen Eire  
 (MUST be stated) \_\_\_\_\_  
 (6) If an alien author domiciled in the United States, state where San Diego, California  
 (7) The title of the motion-picture photoplay is Dierdre

### THE DESCRIPTION AND PRINTS REQUIRED BY LAW ACCOMPANY THIS APPLICATION

(8) Send certificate of registration to Drama Prep. School  
San Diego California  
 (Street) (City) (State)  
 (9) Name and address of person or firm sending the fee K.L. Miller, Pres.  
Drama Prep. School San Diego California  
 (Street) (City) (State)  
 (July, 1941—1,000) [Please turn this over]  
 U. S. GOVERNMENT PRINTING OFFICE

Form L1 is like L2 except that publication date is required.

Form M1 is the same as L2, with following exceptions: number of reels must be inserted in blank in introductory paragraph; publication date must be given, and date of any previous registration. Form M2 is like L2.

Application must be filed in the Copyright Office within the 28th year of the original term

# APPLICATION FOR THE RENEWAL OF A

# COPYRIGHT SUBSISTING IN ANY WORK

## REGISTER OF COPYRIGHTS, Washington, D. C.

Application is hereby made within this the last year of the copyright now subsisting in the work hereinbelow described (in accordance with the provisions of section 28 of the Act of March 4, 1909), for the renewal of the copyright for the renewal term of 28 years from the date when the said copyright will expire. \$1 (statutory fee) is also enclosed.

(1) The renewal copyright is claimed by me, us, as the child of the  
deceased author.  
(Carefully read reverse of this application)

(2) Name of renewal owner Jane Doe Smith  
(Give full legal name of renewal owner)

(3) Address 92 S 12th Street New York New York  
(Street) (City) (State)

(4) Complete title of work Tales of Heroism (later called 'Heroic Plots!')  
(Give address of each owner named above)

(5) Name of each author of renewable matter Jonathan Daw (John R. Doe); and  
Arthur Roe (illustrator)  
(Give name in full)

If pseudonym of author was used in original registration, also give it and true name in space (5), indicating which is pseudonym. In case of music, state who wrote words, music, arrangement, etc., covered by the renewal copyright claim.

R
No. ....
Application for renewal received
\$1 Fee rec'd
Do not write in this space

(6) Original registration: Class A1 No. A984,521 Date\* November 12, 1918

(7) Name of original claimant Dash Book Company

(8) Send certificate of registration to Jane Doe Smith

92 S 12th Street New York New York  
(Street) (City) (State)

(9) Name of person or firm sending fee Jane Doe Smith  
92 S 12th Street New York New York  
(Street) (City) (State)

\* For a published work give date of publication;  
L. C. 2-17

for an unpublished work, date of deposit.

[Please turn this over]

Application for renewal must be filed in the twenty-eighth year of copyright. Note that the status of the person by whom the renewal is claimed must be given on line (1), and if the author used a pseudonym it should be given as well as his real name on line (5).

Form RR is like R, but line (1) calls for name of proprietor as claimant, not author's heir, et cetera; line (4) calls for title and designation as print or label; and (5) calls for nature of article of merchandise.

# Appendix

## AN ACT TO AMEND AND CONSOLIDATE THE ACTS RESPECTING COPYRIGHT

(The Act of March 4, 1909, as amended to date)

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person entitled thereto, upon complying with the provisions of this Act, shall have the exclusive right:

(a) To print, reprint, publish, copy, and vend the copyrighted work;

(b) To translate the copyrighted work into other languages or dialects, or make any other version thereof, if it be a literary work; to dramatize it if it be a nondramatic work; to convert it into a novel or other nondramatic work if it be a drama; to arrange or adapt it if it be a musical work; to complete, execute, and finish it if it be a model or design for a work of art;

(c) To deliver or authorize the delivery of the copyrighted work in public for profit if it be a lecture, sermon, address, or similar production;

(d) To perform or represent the copyrighted work publicly if it be a drama or, if it be a dramatic work and not reproduced in copies for sale, to vend any manuscript or any record whatsoever thereof; to make or to procure the making of any transcription or record thereof by or from which, in whole or in part, it may in any manner or by any method be exhibited, performed, represented, produced, or reproduced; and to exhibit, perform, represent, produce, or reproduce it in any manner or by any method whatsoever;

(e) To perform the copyrighted work publicly for profit if it be a musical composition; and for the purpose of public performance for profit, and for the purposes set forth in subsection (a) hereof, to make any ar-

rangement or setting of it or of the melody of it in any system of notation or any form of record in which the thought of an author may be recorded and from which it may be read or reproduced: *Provided*, That the provisions of this Act, so far as they secure copyright controlling the parts of instruments serving to reproduce mechanically the musical work, shall include only compositions published and copyrighted after July 1, 1909, and shall not include the works of a foreign author or composer unless the foreign state or nation of which such author or composer is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States similar rights: *And provided further, and as a condition of extending the copyright control to such mechanical reproductions*, That whenever the owner of a musical copyright has used or permitted or knowingly acquiesced in the use of the copyrighted work upon the parts of instruments serving to reproduce mechanically the musical work, any other person may make similar use of the copyrighted work upon the payment to the copyright proprietor of a royalty of two cents on each such part manufactured, to be paid by the manufacturer thereof; and the copyright proprietor may require, and if so the manufacturer shall furnish, a report under oath on the twentieth day of each month on the number of parts of instruments manufactured during the previous month serving to reproduce mechanically said musical work, and royalties shall be due on the parts manufactured during any month upon the twentieth

## APPENDIX

of the next succeeding month. The payment of the royalty provided for by this section shall free the articles or devices for which such royalty has been paid from further contribution to the copyright except in case of public performance for profit: *And provided further*, That it shall be the duty of the copyright owner, if he uses the musical composition himself for the manufacture of parts of instruments serving to reproduce mechanically the musical work, or licenses others to do so, to file notice thereof, accompanied by a recording fee, in the copyright office, and any failure to file such notice shall be a complete defense to any suit, action, or proceeding for any infringement of such copyright.

In case of the failure of such manufacturer to pay to the copyright proprietor within thirty days after demand in writing the full sum of royalties due at said rate at the date of such demand the court may award taxable costs to the plaintiff and a reasonable counsel fee, and the court may, in its discretion, enter judgment therein for any sum in addition over the amount found to be due as royalty in accordance with the terms of this Act, not exceeding three times such amount.

The reproduction or rendition of a musical composition by or upon coin-operated machines shall not be deemed a public performance for profit unless a fee is charged for admission to the place where such reproduction or rendition occurs.

**SEC. 2.** That nothing in this Act shall be construed to annul or limit the right of the author or proprietor of an unpublished work, at common law or in equity, to prevent the copying, publication, or use of such unpublished work without his consent, and to obtain damages therefor.

**SEC. 3.** That the copyright provided by this Act shall protect all the copyrightable component parts of the work copyrighted, and all matter therein in which copyright is already subsisting, but without extending the duration or scope of such copyright. The copyright upon composite works or periodicals shall give to the proprietor thereof all the rights in respect thereto which he

would have if each part were individually copyrighted under this Act.

**SEC. 4.** That the works for which copyright may be secured under this Act shall include all the writings of an author.

**SEC. 5.** That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

- (a) Books, including composite and cyclopædic works, directories, gazetteers, and other compilations;
- (b) Periodicals, including newspapers;
- (c) Lectures, sermons, addresses (prepared for oral delivery);
- (d) Dramatic or dramatico-musical compositions;
- (e) Musical compositions;
- (f) Maps;
- (g) Works of art; models or designs for works of art;
- (h) Reproductions of a work of art;
- (i) Drawings or plastic works of a scientific or technical character;
- (j) Photographs;
- (k) Prints and pictorial illustrations including prints or labels used for articles of merchandise;
- (l) Motion-picture photoplays;
- (m) Motion pictures other than photoplays:

*Provided, nevertheless,* That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act.

**SEC. 6.** That compilations or abridgments, adaptations, arrangements, dramatizations, translations, or other versions of works in the public domain, or of copyrighted works when produced with the consent of the proprietor of the copyright in such works, or works republished with new matter, shall be regarded as new works subject to copyright under the provisions of this Act; but the publication of any such new works shall not affect the force or validity of any subsisting copyright upon the matter employed or any part thereof, or be construed to imply an exclusive right to such use of the original works,

or to secure or extend copyright in such original works.

SEC. 7. That no copyright shall subsist in the original text of any work which is in the public domain, or in any work which was published in this country or any foreign country prior to July 1, 1909, and has not been already copyrighted in the United States, or in any publication of the United States Government, or any reprint, in whole or in part, thereof: *Provided, however,* That the publication or republication by the Government, either separately or in a public document, of any material in which copyright is subsisting shall not be taken to cause any abridgment or annulment of the copyright or to authorize any use or appropriation of such copyright material without the consent of the copyright proprietor.

SEC. 8. That the author or proprietor of any work made the subject of copyright by this Act, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this Act: *Provided, however,* That the copyright secured by this Act shall extend to the work of an author or proprietor who is a citizen or subject of a foreign state or nation, only:

(a) When an alien author or proprietor shall be domiciled within the United States at the time of the first publication of his work; or

(b) When the foreign state or nation of which such author or proprietor is a citizen or subject grants, either by treaty, convention, agreement, or law, to citizens of the United States the benefit of copyright on substantially the same basis as to its own citizens, or copyright protection substantially equal to the protection secured to such foreign author under this Act or by treaty; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the United States may, at its pleasure, become a party thereto.

The existence of the reciprocal conditions aforesaid shall be determined by the President of the United States, by

proclamation made from time to time, as the purposes of this Act may require:

*Provided,* That whenever the President shall find that the authors, copyright owners, or proprietors of works first produced or published abroad and subject to copyright or to renewal of copyright under the laws of the United States, including works subject to ad interim copyright, are or may have been temporarily unable to comply with the conditions and formalities prescribed with respect to such works by the copyright laws of the United States, because of the disruption or suspension of facilities essential for such compliance, he may by proclamation grant such extension of time as he may deem appropriate for the fulfillment of such conditions or formalities by authors, copyright owners, or proprietors who are citizens of the United States or who are nationals of countries which accord substantially equal treatment in this respect to authors, copyright owners, or proprietors who are citizens of the United States: *Provided further,* That no liability shall attach under the Copyright Act for lawful uses made or acts done prior to the effective date of such proclamation in connection with such works, or in respect to the continuance for one year subsequent to such date of any business undertaking or enterprise lawfully undertaken prior to such date involving expenditure or contractual obligation in connection with the exploitation, production, reproduction, circulation, or performance of any such work.

The President may at any time terminate any proclamation authorized herein or any part thereof or suspend or extend its operation for such period or periods of time as in his judgment the interests of the United States may require.

SEC. 9. That any person entitled thereto by this Act may secure copyright for his work by publication thereof with the notice of copyright required by this Act; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad-

interim protection under section twenty-one of this Act.

SEC. 10. That such person may obtain registration of his claim to copyright by complying with the provisions of this Act, including the deposit of copies, and upon such compliance the register of copyrights shall issue to him the certificate provided for in section fifty-five of this Act.

SEC. 11. That copyright may also be had of the works of an author of which copies are not reproduced for sale, by the deposit, with claim of copyright, of one complete copy of such work if it be a lecture or similar production or a dramatic, musical, or dramatico-musical composition; of a title and description, with one print taken from each scene or act, if the work be a motion-picture photoplay; of a photographic print if the work be a photograph; of a title and description, with not less than two prints taken from different sections of a complete motion picture, if the work be a motion picture other than a photoplay; or of a photograph or other identifying reproduction thereof, if it be a work of art or a plastic work or drawing. But the privilege of registration of copyright secured hereunder shall not exempt the copyright proprietor from the deposit of copies, under sections twelve and thirteen of this Act, where the work is later reproduced in copies for sale.

SEC. 12. That after copyright has been secured by publication of the work with the notice of copyright as provided in section nine of this Act, there shall be promptly deposited in the copyright office or in the mail addressed to the register of copyrights, Washington, District of Columbia, two complete copies of the best edition thereof then published, or if the work is by an author who is a citizen or subject of a foreign state or nation and has been published in a foreign country, one complete copy of the best edition then published in such foreign country, which copies or copy, if the work be a book or periodical, shall have been produced in accordance with the manufacturing provisions specified in section fifteen of this Act; or if such work be a contribution to a periodical, for which

contribution special registration is requested, one copy of the issue or issues containing such contribution; or if the work is not reproduced in copies for sale, there shall be deposited the copy, print, photograph, or other identifying reproduction provided by section eleven of this Act, such copies or copy, print, photograph, or other reproduction to be accompanied in each case by a claim of copyright. No action or proceeding shall be maintained for infringement of copyright in any work until the provisions of this Act with respect to the deposit of copies and registration of such work shall have been complied with.

SEC. 13. That should the copies called for by section twelve of this Act not be promptly deposited as herein provided, the register of copyrights may at any time after the publication of the work, upon actual notice, require the proprietor of the copyright to deposit them, and after the said demand shall have been made, in default of the deposit of copies of the work within three months from any part of the United States, except an outlying territorial possession of the United States, or within six months from any outlying territorial possession of the United States, or from any foreign country, the proprietor of the copyright shall be liable to a fine of one hundred dollars and to pay to the Library of Congress twice the amount of the retail price of the best edition of the work, and the copyright shall become void.

SEC. 14. That the postmaster to whom are delivered the articles deposited as provided in sections eleven and twelve of this Act shall, if requested, give a receipt therefor and shall mail them to their destination without cost to the copyright claimant.

SEC. 15. That of the printed book or periodical specified in section five, subsections (a) and (b) of this Act, except the original text of a book of foreign origin in a language or languages other than English, the text of all copies accorded protection under this Act, except as below provided, shall be printed from type set within the limits of the United States, either by hand or by the aid of any kind of typesetting machine,

or from plates made within the limits of the United States from type set therein, or, if the text be produced by lithographic process, or photo-engraving process, then by a process wholly performed within the limits of the United States, and the printing of the text and binding of the said book shall be performed within the limits of the United States; which requirements shall extend also to the illustrations within a book consisting of printed text and illustrations produced by lithographic process, or photo-engraving process, and also to separate lithographs or photo-engravings, except where in either case the subjects represented are located in a foreign country and illustrate a scientific work or reproduce a work of art: *Provided, however,* That said requirements shall not apply to works in raised characters for the use of the blind, or to books of foreign origin in a language or languages other than English, or to books published abroad in the English language seeking ad interim protection under this Act, or to works printed or produced in the United States by any other process than those above specified in this section.

SEC. 16. That in the case of the book the copies so deposited shall be accompanied by an affidavit, under the official seal of any officer authorized to administer oaths within the United States, duly made by the person claiming copyright or by his duly authorized agent or representative residing in the United States, or by the printer who has printed the book, setting forth that the copies deposited have been printed from type set within the limits of the United States or from plates made within the limits of the United States from type set therein; or, if the text be produced by lithographic process, or photo-engraving process, that such process was wholly performed within the limits of the United States, and that the printing of the text and binding of the said book have also been performed within the limits of the United States. Such affidavit shall state also the place where and the establishment or establishments in which such type was set or plates were made or lithographic process, or photo-engraving

process or printing and binding were performed and the date of the completion of the printing of the book or the date of publication.

SEC. 17. That any person who, for the purpose of obtaining registration of a claim to copyright, shall knowingly make a false affidavit as to his having complied with the above conditions shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, and all of his rights and privileges under said copyright shall thereafter be forfeited.

SEC. 18. That the notice of copyright required by section nine of this Act shall consist either of the word 'Copyright' or the abbreviation 'Copr.' accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C inclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: *Provided,* That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting on July 1, 1909, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the act of June eighteenth, eighteen hundred and seventy-four.

SEC. 19. That the notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or if a periodical either upon the title-page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title-page or the first page of music: *Provided,* That one notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice.

SEC. 20. That where the copyright proprietor has sought to comply with the provisions of this Act with respect to notice, the omission by accident or mistake of the prescribed notice from a particular copy or copies shall not invalidate the copyright or prevent recovery for infringement against any person who, after actual notice of the copyright, begins an undertaking to infringe it, but shall prevent the recovery of damages against an innocent infringer who has been misled by the omission of the notice; and in a suit for infringement no permanent injunction shall be had unless the copyright proprietor shall reimburse to the innocent infringer his reasonable outlay innocently incurred if the court, in its discretion, shall so direct.

SEC. 21. That in the case of a book first published abroad in the English language the deposit in the copyright office, not later than sixty days after its publication abroad, of one complete copy of the foreign edition, with a request for the reservation of the copyright and a statement of the name and nationality of the author and of the copyright proprietor and of the date of publication of the said book, shall secure to the author or proprietor an ad interim copyright, which shall have all the force and effect given to copyright by this Act, and shall endure until the expiration of four months after such deposit in the copyright office.

SEC. 22. That whenever within the period of such ad interim protection an authorized edition of such book shall be published within the United States, in accordance with the manufacturing provisions specified in section fifteen of this Act, and whenever the provisions of this Act as to deposit of copies, registration, filing of affidavit, and the printing of the copyright notice shall have been duly complied with, the copyright shall be extended to endure in such book for the full term elsewhere provided in this Act.

SEC. 23. That the copyright secured by this Act shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an as-

sumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopædic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopædic or other composite work, the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then the author's executors, or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication.

SEC. 24. That the copyright subsisting in any work on July 1, 1909, may, at the expiration of the term provided for under existing law, be renewed and extended by the author of such work if still living, or the widow, widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living, then by the author's executors, or in the absence of a will, his next of kin, for a further period such that the entire term shall be equal to that secured by this

Act, including the renewal period: *Provided, however,* That if the work be a composite work upon which copyright was originally secured by the proprietor thereof, then such proprietor shall be entitled to the privilege of renewal and extension granted under this section: *Provided,* That application for such renewal and extension shall be made to the copyright office and duly registered therein within one year prior to the expiration of the existing term.

Sec. 25. That if any person shall infringe the copyright in any work protected under the copyright laws of the United States such person shall be liable:

(a) To an injunction restraining such infringement;

(b) To pay to the copyright proprietor such damages as the copyright proprietor may have suffered due to the infringement, as well as all the profits which the infringer shall have made from such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or in lieu of actual damages and profits such damages as to the court shall appear to be just, and in assessing such damages the court may, in its discretion, allow the amounts as hereinafter stated, but in case of a newspaper reproduction of a copyrighted photograph such damages shall not exceed the sum of two hundred dollars nor be less than the sum of fifty dollars, and in the case of the infringement of an undramatized or nondramatic work by means of motion pictures, where the infringer shall show that he was not aware that he was infringing, and that such infringement could not have been reasonably foreseen, such damages shall not exceed the sum of one hundred dollars; and in the case of an infringement of a copyrighted dramatic or dramatico-musical work by a maker of motion pictures and his agencies for distribution thereof to exhibitors, where such infringer shows that he was not aware that he was infringing a copyrighted work, and that such infringements could not reasonably have been foreseen, the entire sum of such damages recoverable

by the copyright proprietor from such infringing maker and his agencies for the distribution to exhibitors of such infringing motion picture shall not exceed the sum of five thousand dollars nor be less than two hundred and fifty dollars, and such damages shall in no other case exceed the sum of five thousand dollars nor be less than the sum of two hundred and fifty dollars, and shall not be regarded as a penalty. But the foregoing exceptions shall not deprive the copyright proprietor of any other remedy given him under this law, nor shall the limitation as to the amount of recovery apply to infringements occurring after the actual notice to a defendant, either by service of process in a suit or other written notice served upon him.

First. In the case of a painting, statue, or sculpture, ten dollars for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Second. In the case of any work enumerated in section five of this Act, except a painting, statue, or sculpture, one dollar for every infringing copy made or sold by or found in the possession of the infringer or his agents or employees;

Third. In the case of a lecture, sermon, or address, fifty dollars for every infringing delivery;

Fourth. In the case of a dramatic or dramatico-musical or a choral or orchestral composition, one hundred dollars for the first and fifty dollars for every subsequent infringing performance; in the case of other musical compositions, ten dollars for every infringing performance;

(c) To deliver up on oath, to be impounded during the pendency of the action, upon such terms and conditions as the court may prescribe, all articles alleged to infringe a copyright;

(d) To deliver up on oath for destruction all the infringing copies or devices, as well as all plates, molds, matrices, or other means for making such infringing copies as the court may order;

(e) Whenever the owner of a musical copyright has used or permitted the use of the copyrighted work upon the

parts of musical instruments serving to reproduce mechanically the musical work, then in case of infringement of such copyright by the unauthorized manufacture, use, or sale of interchangeable parts, such as disks, rolls, bands, or cylinders for use in mechanical music-producing machines adapted to reproduce the copyrighted music, no criminal action shall be brought, but in a civil action an injunction may be granted upon such terms as the court may impose, and the plaintiff shall be entitled to recover in lieu of profits and damages a royalty as provided in section one, subsection (e), of this Act: *Provided also*, That whenever any person, in the absence of a license agreement, intends to use a copyrighted musical composition upon the parts of instruments serving to reproduce mechanically the musical work, relying upon the compulsory license provision of this Act, he shall serve notice of such intention, by registered mail, upon the copyright proprietor at his last address disclosed by the records of the copyright office, sending to the copyright office a duplicate of such notice; and in case of his failure so to do the court may, in its discretion, in addition to sums hereinabove mentioned, award the complainant a further sum, not to exceed three times the amount provided by section one, subsection (e), by way of damages, and not as a penalty, and also a temporary injunction until the full award is paid.

Rules and regulations for practice and procedure under this section shall be prescribed by the Supreme Court of the United States.

**SEC. 26.** That any court given jurisdiction under section thirty-four of this Act may proceed in any action, suit, or proceeding instituted for violation of any provision hereof to enter a judgment or decree enforcing the remedies herein provided.

**SEC. 27.** That the proceedings for an injunction, damages, and profits, and those for the seizure of infringing copies, plates, molds, matrices, and so forth, aforementioned, may be united in one action.

**SEC. 28.** That any person who willfully and for profit shall infringe any

copyright secured by this Act, or who shall knowingly and willfully aid or abet such infringement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment for not exceeding one year or by a fine of not less than one hundred dollars nor more than one thousand dollars, or both, in the discretion of the court: *Provided, however*, That nothing in this Act shall be so construed as to prevent the performance of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses by public schools, church choirs, or vocal societies, rented, borrowed, or obtained from some public library, public school, church choir, school choir, or vocal society, provided the performance is given for charitable or educational purposes and not for profit.

**SEC. 29.** That any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this Act, or words of the same purport, in or upon any uncopyrighted article, or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted shall be guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars and not more than one thousand dollars. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of one hundred dollars.

**SEC. 30.** That the importation into the United States of any article bearing a false notice of copyright when there is no existing copyright thereon in the United States, or of any piratical copies of any work copyrighted in the United States, is prohibited.

**SEC. 31.** That during the existence of the American copyright in any book the importation into the United States of any piratical copies thereof or of any copies thereof (although authorized by the author or proprietor) which have not been produced in accordance with

the manufacturing provisions specified in section fifteen of this Act, or any plates of the same not made from type set within the limits of the United States, or any copies thereof produced by lithographic or photo-engraving process not performed within the limits of the United States, in accordance with the provisions of section fifteen of this Act, shall be, and is hereby, prohibited: *Provided, however,* That, except as regards piratical copies, such prohibition shall not apply:

- (a) To works in raised characters for the use of the blind;
- (b) To a foreign newspaper or magazine, although containing matter copyrighted in the United States printed or reprinted by authority of the copyright proprietor, unless such newspaper or magazine contains also copyright matter printed or reprinted without such authorization;
- (c) To the authorized edition of a book in a foreign language or languages of which only a translation into English has been copyrighted in this country;
- (d) To any book published abroad with the authorization of the author or copyright proprietor when imported under the circumstances stated in one of the four subdivisions following, that is to say:

First. When imported, not more than one copy at one time, for individual use and not for sale; but such privilege of importation shall not extend to a foreign reprint of a book by an American author copyrighted in the United States;

Second. When imported by the authority or for the use of the United States;

Third. When imported, for use and not for sale, not more than one copy of any such book in any one invoice, in good faith, by or for any society or institution incorporated for educational, literary, philosophical, scientific, or religious purposes, or for the encouragement of the fine arts, or for any college, academy, school, or seminary of learning, or for any State, school, college, university, or free public library in the United States;

Fourth. When such books form parts of libraries or collections pur-

chased en bloc for the use of societies, institutions, or libraries designated in the foregoing paragraph, or form parts of the libraries or personal baggage belonging to persons or families arriving from foreign countries and are not intended for sale:

*Provided,* That copies imported as above may not lawfully be used in any way to violate the rights of the proprietor of the American copyright or annul or limit the copyright protection secured by this Act, and such unlawful use shall be deemed an infringement of copyright.

SEC. 32. That any and all articles prohibited importation by this Act which are brought into the United States from any foreign country (except in the mails) shall be seized and forfeited by like proceedings as those provided by law for the seizure and condemnation of property imported into the United States in violation of the customs revenue laws. Such articles when forfeited shall be destroyed in such manner as the Secretary of the Treasury or the court, as the case may be, shall direct: *Provided, however,* That all copies of authorized editions of copyright books imported in the mails or otherwise in violation of the provisions of this Act may be exported and returned to the country of export whenever it is shown to the satisfaction of the Secretary of the Treasury, in a written application, that such importation does not involve willful negligence or fraud.

SEC. 33. That the Secretary of the Treasury and the Postmaster General are hereby empowered and required to make and enforce individually or jointly such rules and regulations as shall prevent the importation into the United States of articles prohibited importation by this Act, and may require, as conditions precedent to exclusion of any work in which copyright is claimed, the copyright proprietor or any person claiming actual or potential injury by reason of actual or contemplated importations of copies of such work to file with the Post Office Department or the Treasury Department a certificate of the Register of Copyrights that the provisions of section 12 of this Act, as amended, have been fully complied

with, and to give notice of such compliance to postmasters or to customs officers at the ports of entry in the United States in such form and accompanied by such exhibits as may be deemed necessary for the practical and efficient administration and enforcement of the provisions of sections 30 and 31 of this Act.

SEC. 34. That all actions, suits, or proceedings arising under the copyright laws of the United States shall be originally cognizable by the district courts of the United States, the district court of any Territory, the district court of the District of Columbia, the district courts of Alaska, Hawaii, and Porto Rico, and the courts of first instance of the Philippine Islands.

SEC. 35. That civil actions, suits, or proceedings arising under this Act may be instituted in the district of which the defendant or his agent is an inhabitant, or in which he may be found.

SEC. 36. That any such court or judge thereof shall have power, upon bill in equity filed by any party aggrieved, to grant injunctions to prevent and restrain the violation of any right secured by said laws, according to the course and principles of courts of equity, on such terms as said court or judge may deem reasonable. Any injunction that may be granted restraining and enjoining the doing of anything forbidden by this Act may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative throughout the United States and be enforceable by proceedings in contempt or otherwise by any other court or judge possessing jurisdiction of the defendants.

SEC. 37. That the clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to enforce said injunction, transmit without delay to said court a certified copy of all the papers in said cause that are on file in his office.

SEC. 38. That the orders, judgments, or decrees of any court mentioned in section thirty-four of this Act arising under the copyright laws of the United States may be reviewed on appeal or

writ of error in the manner and to the extent now provided by law for the review of cases determined in said courts, respectively.

SEC. 39. That no criminal proceeding shall be maintained under the provisions of this Act unless the same is commenced within three years after the cause of action arose.

SEC. 40. That in all actions, suits, or proceedings under this Act, except when brought by or against the United States or any officer thereof, full costs shall be allowed, and the court may award to the prevailing party a reasonable attorney's fee as part of the costs.

SEC. 41. That the copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this Act shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained.

SEC. 42. That copyright secured under this or previous Acts of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will.

SEC. 43. That every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be *prima facie* evidence of the execution of the instrument.

SEC. 44. That every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable

consideration, without notice, whose assignment has been duly recorded.

SEC. 45. That the register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this Act he shall furnish to any person requesting the same a certified copy thereof under the said seal.

SEC. 46. That when an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this Act.

SEC. 47. That all records and other things relating to copyrights required by law to be preserved shall be kept and preserved in the copyright office, Library of Congress, District of Columbia, and shall be under the control of the register of copyrights, who shall, under the direction and supervision of the Librarian of Congress, perform all the duties relating to the registration of copyrights.

SEC. 48. That there shall be appointed by the Librarian of Congress a register of copyrights, at a salary of four thousand dollars per annum, and one assistant register of copyrights, at a salary of three thousand dollars per annum, who shall have authority during the absence of the register of copyrights to attach the copyright office seal to all papers issued from the said office and to sign such certificates and other papers as may be necessary. There shall also be appointed by the Librarian such subordinate assistants to the register as may from time to time be authorized by law.

SEC. 49. That the register of copyrights shall make daily deposits in some bank in the District of Columbia, designated for this purpose by the Secretary of the Treasury as a national depository, of all moneys received to be applied as copyright fees, and shall make weekly deposits with the Secretary of the Treasury in such manner as the latter shall direct, of all copyright fees actually applied under the provisions of this Act, and annual deposits of sums received

which it has not been possible to apply as copyright fees or to return to the remitters, and shall also make monthly reports to the Secretary of the Treasury and to the Librarian of Congress of the applied copyright fees for each calendar month, together with a statement of all remittances received, trust funds on hand, moneys refunded, and unapplied balances.

SEC. 50. That the register of copyrights shall give bond to the United States in the sum of twenty thousand dollars, in form to be approved by the Solicitor of the Treasury and with securities satisfactory to the Secretary of the Treasury, for the faithful discharge of his duties.

SEC. 51. That the register of copyrights shall make an annual report to the Librarian of Congress, to be printed in the annual report on the Library of Congress, of all copyright business for the previous fiscal year, including the number and kind of works which have been deposited in the copyright office during the fiscal year, under the provisions of this Act.

SEC. 52. That the seal provided under the Act of July eighth, eighteen hundred and seventy, and at present used in the copyright office, shall continue to be the seal thereof, and by it all papers issued from the copyright office requiring authentication shall be authenticated.

SEC. 53. That, subject to the approval of the Librarian of Congress, the register of copyrights shall be authorized to make rules and regulations for the registration of claims to copyright as provided by this Act.

SEC. 54. That the register of copyrights shall provide and keep such record books in the copyright office as are required to carry out the provisions of this Act, and whenever deposit has been made in the copyright office of a copy of any work under the provisions of this Act he shall make entry thereof.

SEC. 55. That in the case of each entry the person recorded as the claimant of the copyright shall be entitled to a certificate of registration under seal of the copyright office, to contain the name and address of said claimant, the name and of the country of which the author of

the work is a citizen or subject, and when an alien author domiciled in the United States at the time of said registration, then a statement of that fact, including his place of domicile, the name of the author (when the records of the copyright office shall show the same), the title of the work which is registered for which copyright is claimed, the date of the deposit of the copies of such work, the date of publication if the work has been reproduced in copies for sale, or publicly distributed, and such marks as to class designation and entry number as shall fully identify the entry. In the case of a book the certificate shall also state the receipt of the affidavit, as provided by section sixteen of this Act, and the date of the completion of the printing, or the date of the publication of the book, as stated in the said affidavit. The register of copyrights shall prepare a printed form for the said certificate, to be filled out in each case as above provided for in the case of all registrations made after July 1, 1909, and in the case of all previous registrations so far as the copyright office record books shall show such facts, which certificate, sealed with the seal of the copyright office, shall, upon payment of the prescribed fee, be given to any person making application for the same. Said certificate shall be admitted in any court as *prima facie* evidence of the facts stated therein. In addition to such certificate the register of copyrights shall furnish, upon request, without additional fee, a receipt for the copies of the work deposited to complete the registration.

SEC. 56. That the register of copyrights shall fully index all copyright registrations and assignments and shall print at periodic intervals a catalogue of the titles of articles deposited and registered for copyright, together with suitable indexes, and at stated intervals shall print complete and indexed catalogues for each class of copyright entries, and may thereupon, if expedient, destroy the original manuscript catalogue cards containing the titles included in such printed volumes and representing the entries made during such intervals. The current catalogues

of copyright entries and the index volumes herein provided for shall be admitted in any court as *prima facie* evidence of the facts stated therein as regards any copyright registration.

SEC. 57. That the said printed current catalogues as they are issued shall be promptly distributed by the copyright office to the collectors of customs of the United States and to the postmasters of all exchange offices of receipt of foreign mails, in accordance with revised lists of such collectors of customs and postmasters prepared by the Secretary of the Treasury and the Postmaster-General, and they shall also be furnished in whole or in part to all parties desiring them at a price to be determined by the register of copyrights for each part of the catalogue not exceeding ten dollars for the complete yearly catalogue of copyright entries. The consolidated catalogues and indexes shall also be supplied to all persons ordering them at such prices as may be determined to be reasonable, and all subscriptions for the catalogues shall be received by the Superintendent of Public Documents, who shall forward the said publications; and the money thus received shall be paid into the Treasury of the United States and accounted for under such laws and Treasury regulations as shall be in force at the time.

SEC. 58. That the record books of the copyright office, together with the indexes to such record books, and all works deposited and retained in the copyright office, shall be open to public inspection; and copies may be taken of the copyright entries actually made in such record books, subject to such safeguards and regulations as shall be prescribed by the register of copyrights and approved by the Librarian of Congress.

SEC. 59. That of the articles deposited in the copyright office under the provisions of the copyright laws of the United States or of this Act, the Librarian of Congress shall determine what books and other articles shall be transferred to the permanent collections of the Library of Congress, including the law library, and what other books or articles shall be placed in the reserve

collections of the Library of Congress for sale or exchange, or be transferred to other governmental libraries in the District of Columbia for use therein.

SEC. 60. That of any articles undisposable of as above provided, together with all titles and correspondence relating thereto, the Librarian of Congress and the register of copyrights jointly shall, at suitable intervals, determine what of these received during any period of years it is desirable or useful to preserve in the permanent files of the copyright office, and, after due notice as hereinafter provided, may within their discretion cause the remaining articles and other things to be destroyed: *Provided*, That there shall be printed in the Catalogue of Copyright Entries from February to November, inclusive, a statement of the years of receipt of such articles and a notice to permit any author, copyright proprietor, or other lawful claimant to claim and remove before the expiration of the month of December of that year anything found which relates to any of his productions deposited or registered for copyright within the period of years stated, not reserved or disposed of as provided for in this Act: *And provided further*, That no manuscript of an unpublished work shall be destroyed during its term of copyright without specific notice to the copyright proprietor of record, permitting him to claim and remove it.

SEC. 61. That the register of copyrights shall receive, and the persons to whom the services designated are rendered shall pay, the following fees: For the registration of any work subject to copyright, deposited under the provisions of this Act, \$2, which sum is to include a certificate of registration under seal: *Provided*, That in the case of any unpublished work registered under the provisions of section 11, the fee for registration with certificate shall be \$1, and in the case of a published photograph the fee shall be \$1 where a certificate is not desired. For every additional certificate of registration made, \$1. For recording and certifying any instrument of writing for the assignment of copyright, or any such

license specified in section one, subsection (e), or for any copy of such assignment or license, duly certified, \$2 for each copyright office record-book page or additional fraction thereof over one-half page. For recording the notice of user or acquiescence specified in section one, subsection (e), \$1 for each notice of not more than five titles. For comparing any copy of an assignment with the record of such document in the copyright office and certifying the same under seal, \$2. For recording the renewal of copyright provided for in sections twenty-three and twenty-four, \$1. For recording the transfer of the proprietorship of copyrighted articles, ten cents for each title of a book or other article, in addition to the fee prescribed for recording the instrument of assignment. For any requested search of copyright office records, indexes, or deposits, \$1 for each full hour of time consumed in making such search: *Provided*, That only one registration at one fee shall be required in the case of several volumes of the same book deposited at the same time.

SEC. 62. That in the interpretation and construction of this Act 'the date of publication' shall in the case of a work of which copies are reproduced for sale or distribution be held to be the earliest date when copies of the first authorized edition were placed on sale, sold, or publicly distributed by the proprietor of the copyright or under his authority, and the word 'author' shall include an employer in the case of works made for hire.

SEC. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

SEC. 64. That this Act shall go into effect on the first day of July, nineteen hundred and nine.

Approved, March 4, 1909.  
[60th Congress, 2d session.]



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